C A D W A L A D E R

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, N.W., Washington, DC 20001
Tel +1 202 862 2200 Fax +1 202 862 2400
www.cadwalader.com

New York London Charlotte Washington
Houston Beijing Hong Kong Brussels

October 11, 2012

VIA HAND DELIVERY

Mr. Alvin J. Nichols
Chairman, Audits and Investigations Committee
of the Board of Directors
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, D.C. 20001

Re: Investigation of the Florida Avenue Joint Development Project

Dear Members of the Special Working Group of the Audits and Investigations Committee:*

Per your request, this report sets forth the findings of our investigation into certain allegations surrounding a joint development project located on a Metro-owned property on Florida Avenue in Northwest Washington, D.C. As directed, our investigation was limited to evaluating the joint development process for the Florida Avenue property and determining whether any Member of the Board of Directors of the Washington Metropolitan Area Transit Authority ("WMATA" or "Metro") acted in a manner contrary to Metro's Standards of Conduct. Our investigation did not extend to, and we have no conclusions with respect to, any person other than those Board Members serving during the Metro joint development process for the Florida Avenue property.

* Bylaws of the Washington Metropolitan Area Transit Authority Board of Directors, Article XII § (B), adopted July 21, 2011, *available at* http://wmata.com/about_metro/docs/Bylaws.pdf.

Bradley J. Bondi Tel +1 202 862 2314 Fax +1 202 862 2400 bradley.bondi@cwt.com

CADWALADER

REPORT OF INVESTIGATION

FOR THE

BOARD OF DIRECTORS FOR THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

October 11, 2012

C A D W A L A D E R

October 11, 2012

TABLE OF CONTENTS

Page

I. SUMMARY OF REPORT 2

II. INTRODUCTION 7

III. SCOPE 7

IV. LIST OF RELEVANT PERSONS 9

V. CHRONOLOGY OF EVENTS 11

VI. BACKGROUND 13

A. Standards of Conduct 13

B. Facts 14

C. Councilmember Graham's Involvement in Metro's Negotiations with Banneker Ventures 29

D. No Evidence of Motivation Based upon Pecuniary Interests 43

VII. INVESTIGATIVE FINDINGS AND CONCLUSIONS 43

A. Metro's Selection Process Did Not Address Key Operational and Policy Issues before Metro Joint Development Staff Presented the Proposal to Select Banneker Ventures to the Metro Board 43

B. The Lack of a Clearly Defined Role for Metro Board Members Allowed Certain Board Members to Become Involved in Negotiating with Banneker Ventures 45

C. Even with Adequate Opportunities, Banneker Ventures Could Not Successfully Identify a Permanent Development Partner or Address Other Issues that Arose During the Negotiations within the Allotted Time Period 50

D. Councilmember Graham Acted in a Manner Contrary to Metro's Standards of Conduct 53

October 11, 2012

I. SUMMARY OF REPORT

Cadwalader's investigation reviewed the decisions of the Metro Board with respect to a joint development project located on a Metro-owned property on Florida Avenue in Northwest Washington, D.C. (the "Florida Avenue Project") and examined allegations that Metro Board Members may have violated Metro's Standards of Conduct.

The relevant provision of the Standards of Conduct in force during the time period at issue in this investigation is:

> Article III § A: Public funds must be expended in a manner which assures the highest degree of confidence and public trust in WMATA. It is imperative that Board Members in their private financial relationships and *in their official conduct strictly avoid engaging in actions which create conflicts of interest or the appearance of a conflict of interest. It is likewise imperative that Board Members act impartially in their official conduct by avoiding any actions which might result in favored treatment or appearances thereof toward any individual, private organization, consultant, contractor or potential consultant or contractor. Each Board Member while acting in his/her capacity as a WMATA Board Member, has a duty to place the public interest foremost in any dealings involving WMATA* (emphasis added).

Our investigation focused on, and was limited to, evaluating the conduct of Metro Board Members related to the development of the Florida Avenue property. Accordingly, we offer no views on the conduct of other persons involved in this matter. Equally important, this investigative report by its nature focuses on historical conduct of Board Members, many of whom no longer serve on the Metro Board, and on events that transpired between 2007 and 2010. This report does not address the changes to the joint development process and enhancements to Metro Board governance that took place subsequent to these events. Although not reflected in this report, Cadwalader is supporting the Board's continuing commitment to improving governance.

A. Factual Background

The Metro Board first considered the Florida Avenue Project at a meeting of the Planning, Development and Real Estate Committee ("PDREC") on April 24, 2008. At that meeting, Metro joint development staff recommended that the Metro Board select Banneker Ventures, the development firm that presented the highest bid, to develop the property. D.C. Councilmember Jim Graham, then one of two Metro Board Members representing the District of

Columbia, expressed concerns about Banneker Ventures's experience and financial capabilities. Councilmember Graham suggested that the PDREC defer a vote to select Banneker Ventures to develop the Florida Avenue Property for 60 days.

Before the Metro Board met again to consider the Florida Avenue Project, Councilmember Graham held a series of meetings with parties involved in the development. He met with Banneker Ventures principal Omar Karim and suggested that Banneker Ventures partner with LaKritz Adler, another finalist for the Florida Avenue Project. Councilmember Graham also met with Metro joint development staff and Metro's General Counsel to discuss additional information that he had independently gathered about Banneker Ventures and to raise additional concerns.

Councilmember Graham met with another principal of Banneker Ventures, Warren Williams, on May 29, 2008. At that time, Mr. Williams and his wife were involved in a separate venture that had submitted a bid to operate the D.C. lottery. In connection with this endeavor, lobbyists hired by Mr. and Mrs. Williams arranged a meeting with Councilmember Graham. While Mr. and Mrs. Williams and their lobbyists expected to discuss the lottery, Councilmember Graham immediately began to air complaints about Mr. Williams. After he concluded these remarks, according to several participants in the meeting, Councilmember Graham then told Mr. Williams that he was "winning too much" and that Councilmember Graham would consider supporting Mr. Williams's lottery bid only if Banneker Ventures withdrew from the Florida Avenue Project. Following the meeting, Mr. and Mrs. Williams and their lobbyists exchanged e-mails expressing surprise and concern about Councilmember Graham's statements.

Banneker Ventures did not withdraw from the Florida Avenue Project and was selected by the Metro Board on June 26, 2008 to develop the property. The Metro Board resolution approving Banneker Ventures's selection stipulated that the Florida Avenue Project must include an affordable housing component and stated that Metro staff should provide further definition of the roles and responsibilities of the members of the development team. Banneker Ventures and Metro joint development staff then commenced further negotiations with the goal of presenting a final term sheet to the Metro Board.

Metro and Banneker Ventures confronted numerous obstacles to finalizing a term sheet. Metro lacked clear policies on key aspects of the term sheet, such as affordable housing requirements and acceptable leasing arrangements. Concerns and inquiries raised by individual Board Members delayed negotiations. Banneker Ventures was unable to provide an acceptable financial offer or maintain a partnership with a more experienced developer. The financial and economic crisis affecting the nation and the region impacted the real estate market and created additional difficulties for the parties.

Despite these setbacks, Metro and Banneker Ventures continued to negotiate an agreement for nearly two years. The Metro Board extended the time period allotted for Metro and Banneker Ventures to negotiate a term sheet three times. Finally, on March 25, 2010, the Metro Board unanimously voted to table a motion to extend the negotiation period. Banneker Ventures's exclusive negotiation period expired shortly thereafter.

B. Findings and Conclusions

As discussed *infra* in greater detail, based on the information reviewed in the course of the investigation, the investigative team came to the following findings and conclusions:

1. Metro's Selection Process Did Not Address Key Operational and Policy Issues before Metro Joint Development Staff Presented the Proposal to Select Banneker Ventures to the Metro Board

At the time Metro joint development staff recommended Banneker Ventures's proposal to develop the Florida Avenue Property to the Metro Board, Metro lacked policies or guidelines in the key areas of affordable housing and acceptable leasing arrangements. Although the Metro Board considered affordable housing to be an essential component of joint development projects, it had not adopted the District of Columbia's DUKE Plan or any other policy that would have provided Metro joint development staff and potential development partners with specific requirements, guidelines or goals for affordable housing. As a result, Metro and Banneker Ventures struggled to implement the Metro Board's requirement that the Florida Avenue Project include an affordable housing component, leading to delays in the negotiations. Metro's lack of clarity about acceptable leasing arrangements also stalled the negotiations. Banneker Ventures and Metro joint development staff spent several months exploring ways in which Banneker Ventures could include an adjacent property into the project, before eventually concluding that such an arrangement would not be feasible for Metro.

2. The Lack of a Clearly Defined Role for Metro Board Members Allowed Certain Board Members to Become Involved in Negotiating with Banneker Ventures

During the time the Metro Board considered the Florida Avenue Project, Metro lacked a clear policy on the appropriate level of involvement for individual Board Members in joint development projects. While the Procedures for the Metro Board of Directors, dictated that Metro Board Members "shall not direct or supervise . . . any Metro employee or contractor," the Procedures did not prohibit individual Metro Board Members from meeting or consulting with Metro staff or developers. Without this guidance, the Maryland, Virginia and federal government Board Members believed the proper scope of their actions on the Florida Avenue Project needed to be confined to Board Meetings, while the Metro Board Members representing the District of Columbia, Councilmember Graham and Neil Albert, then Deputy Mayor for

Economic Development, displayed a different understanding of their role. Both Councilmember Graham and Deputy Mayor Albert had direct dealings with Banneker Ventures and Metro staff concerning the Florida Avenue Project, even engaging in detailed negotiations outside of the Metro Board process. In the absence of a clear policy governing their interactions, the direct and substantial involvement of Councilmember Graham and Deputy Mayor Albert in the Florida Avenue Project may have contributed to an appearance of political pressure being inserted into Metro Board decision making.

3. Even with Adequate Opportunities, Banneker Ventures Could Not Successfully Identify a Permanent Development Partner or Address Other Issues that Arose During the Negotiations within the Allotted Time Period

In the two years that Banneker Ventures spent negotiating with Metro, Banneker Ventures did not adequately resolve two significant issues: making a reasonable financial offer and finding a reliable development partner. Banneker Ventures initially lowered its offer price on the grounds that the Metro Board's requirement to include affordable housing caused a drop in the value of the project. While Banneker Ventures raised its financial offer somewhat in the ensuing negotiations, it was unable to raise its offer to a level that was acceptable to the Metro Board. Banneker Ventures was also unable to retain an experienced development partner, even though the Metro Board made it clear to Banneker Ventures that it must partner with one. At the time Banneker Ventures's negotiating period expired, Banneker's third development partner had dropped out of the project and Banneker Ventures had not identified a replacement. As Banneker Ventures struggled to resolve these issues, it lost support among Metro Board members.

4. Councilmember Graham Acted in a Manner Contrary to Metro's Standards of Conduct

As discussed within this report, the evidence establishes that Councilmember Graham acted in a manner contrary to Metro's Standards of Conduct in two ways. First, by telling Warren Williams that he would consider supporting W2I's lottery bid if Banneker Ventures withdrew from the Florida Avenue Project, Councilmember Graham pitted the interests of the Council of the District of Columbia against the interests of Metro, and thereby unnecessarily created a conflict of interest, or, at the least, the appearance of a conflict of interest. The fact that Councilmember Graham served on both the D.C. Council and the Metro Board was not the source of the conflict, and we take no position on the fact that elected officials serve on the Metro Board. Indeed, the Metro Board has an extensive history of elected officials dutifully serving on the Metro Board without issue, and the Metro Board had in place during the relevant period Standards of Conduct designed to promote a fair, transparent, and ethical contracting process. Councilmember Graham created the conflict through his own actions of appearing to barter a Metro joint development project with a matter before the D.C. Council. Rather than

operating within the confines of the Metro boardroom to garner the necessary votes to oppose Banneker Ventures, he circumvented the Metro Board by attempting to single-handedly persuade Mr. Williams to withdraw from the Florida Avenue Project by using the lucrative D.C. lottery contract as leverage. These actions were done without the knowledge and consent of the Metro Board. Regardless of whether Councilmember Graham was correct in his concerns about Banneker Ventures, the method he used toward achieving his goal undermined the integrity of the joint development process.

Second, by appearing to continue to support LaKritz Adler's proposal for, or inclusion in, the Florida Avenue Project while at the same time opposing Banneker Ventures, Councilmember Graham acted contrary to his duty to appear impartial. This is not to suggest that LaKritz Adler acted inappropriately to warrant Councilmember Graham's support. Instead, Councilmember Graham appeared to be motivated by some combination of his own animosity toward Warren Williams and his interest in shaping the Florida Avenue Project as he thought appropriate. Regardless of whether another developer would have been a better choice than Banneker Ventures, the appropriate venue for Councilmember Graham to air his concerns with Banneker Ventures or to propose changes to the joint development team was the Metro boardroom.

As a consequence of the foregoing, the public's trust in Metro's joint development process has been harmed and thus Councilmember Graham's actions resulted in a breach of his duty to place the public interest foremost in any dealings involving Metro.

October 11, 2012

REPORT OF INVESTIGATION

II. INTRODUCTION

On February 23, 2012, the Board of Directors for the Washington Metropolitan Area Transit Authority ("Metro" or "WMATA") unanimously approved a resolution directing the Audits and Investigations Committee to appoint an independent counsel to investigate certain allegations surrounding a joint development project located on a Metro-owned property on Florida Avenue in Northwest Washington, D.C.

Pursuant to the resolution, Metro's Office of Procurement and Material issued a request for proposals. On May 9, 2012, the Audits and Investigations Committee retained Cadwalader, Wickersham & Taft LLP ("Cadwalader"), an international law firm with extensive experience in internal investigations, to undertake a thorough review of the joint development process for the Florida Avenue property, and the Metro Board's decisions regarding the project. The Audits and Investigations Committee also specifically directed Cadwalader to investigate allegations that Metro Board Members may have violated Metro's Standards of Conduct during the joint development process for the Florida Avenue property.[1] Finally, the Audits and Investigations Committee directed Cadwalader to create a report with findings of fact for the Metro Board of Directors and to advise the Metro Board concerning changes to the joint development process, the Standards of Conduct, and other governance matters.

III. SCOPE

The investigation commenced in May 2012 and ended in September 2012. The investigation included a review of public and nonpublic information obtained from Metro and various other parties and a review of prior investigations conducted by other agencies. Unlike any prior

[1] Prior to our investigation, Metro had not conducted any investigation related to the Florida Avenue Project, let alone any investigation into allegations of misconduct by any of its Board members. At present, Metro's Office of Inspector General is prohibited by the Metro Procedures from investigating misconduct of Metro Board members. *See* Procedures of the Washington Metropolitan Area Transit Authority Board of Directors, Article X § (B), adopted July 21, 2011. Although Metro's General Counsel responded in 2010 to some allegations raised in an April 27, 2010 letter from A. Scott Bolden, an attorney for Banneker Ventures, she did not interview witnesses, did not collect and review documents from the parties involved, and did not examine allegations of Board Member misconduct when formulating her response. Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Carol O'Keeffe Interview Memorandum (June 21, 2012) ("O'Keeffe Interview Memo") (stating that she did not investigate possible misconduct by the Board Members because she did not believe the actions of any Board Member affected Banneker Ventures's inability to successfully negotiate an agreement).

investigations, the present investigation specifically examined allegations made against Board Members and whether their actions violated provisions of Metro's Standards of Conduct.

In addition, the Cadwalader team questioned thirteen current and former Metro Board Members, six current and former Metro employees, and fourteen other involved persons, in some instances under oath and using a court reporter.[2]

Our investigation focused on, and was limited to, evaluating the conduct of Metro Board Members related to the development of the Florida Avenue property. Accordingly, we offer no views on the conduct of other persons involved in this matter. Equally important, this investigative report by its nature focuses on historical conduct of Board Members, many of whom no longer serve on the Metro Board, and on events that transpired between 2007 and 2010. This report does not address the changes to the joint development process and enhancements to Metro Board governance that took place subsequent to these events. Although not reflected in this report, Cadwalader is supporting the Board's continuing commitment to improving governance.

[2] The full list of persons interviewed is on file with Cadwalader, Wickersham & Taft LLP. Attempts to interview former Metro Board Members Marion Barry and Michael Brown were unsuccessful. Former Board Member Marcell Solomon was unable to be contacted. LaKritz Adler, a developer involved in issues relating to the development located on Florida Avenue in Northwest Washington, D.C., partially cooperated with the investigation, only after months of negotiations. A subpoena was issued to LaKritz Adler on June 29, 2012, calling for it to produce documents required for the investigation. After initially refusing to produce documents and questioning our legal authority, LaKritz Adler produced a small number of documents on July 25, 2012, and later produced more documents on September 7, 2012 and September 12, 2012 after extensive and time-consuming negotiations. Moreover, counsel to LaKritz Adler was unwilling to make Joshua Adler, one of the company's principals, available for testimony under oath, but did allow him to be interviewed.

IV. LIST OF RELEVANT PERSONS

Voting Metro Board Members during the Relevant Period

- Neil Albert, Metro Board Member for D.C. (2008 to 2011) and former Deputy Mayor for Economic Development for the District of Columbia;
- Peter Benjamin, Metro Board Member for Maryland (2007 to 2011);
- Jim Graham, Metro Board Member for D.C. (January 1, 1999 to 2011) and D.C. Councilmember, Ward 1;
- Elizabeth Hewlett, Metro Board Member for Maryland (2007 to 2011);
- Catherine Hudgins, Metro Board Member for Virginia (2004 to present) and Chair of the Metro Board (2012 to present);
- Emeka Moneme, Metro Board Member for D.C. (2007 to 2008);
- Christopher Zimmerman, Metro Board Member for Virginia (1998 to 2010);

Developers Involved in the Florida Avenue Project

- Banneker Ventures
 - Omar Karim, Principal of Banneker Ventures;
 - Warren Williams, Former Principal of Banneker Ventures and Co-Owner of W2Tech;
- Donatelli Development
 - Larry Clark, Principal of Donatelli Development;
 - Christopher Donatelli, Principal of Donatelli Development;
- Metropolis Development Company
 - Merrick Malone, Principal of Metropolis Development Company;

 - Scott Pannick, Principal of Metropolis Development Company;

- LaKritz Adler Development
 - Joshua Adler, Principal of LaKritz Adler Development;
 - Robert LaKritz, Principal of LaKritz Adler Development;

Relevant Participants in the District of Columbia Lottery

- Jim Link, Partner, American Capitol Group;
- Alaka Williams, Co-Owner of W2Tech;
- Crystal Wright, Principal of the Baker Wright Group;

Metro Joint Development Staff

- Nathaniel Bottigheimer, Metro Assistant General Manager for Planning and Joint Development;
- John Catoe, Metro General Manager (2007 to 2010);
- Rosalyn Doggett, Metro Senior Transit Oriented Development Specialist;
- Carol O'Keeffe, Metro General Counsel;
- Joshua Montague, Metro Assistant General Counsel;

Staff Members for Councilmember Graham

- Steven Hernandez, former Director of Committees for D.C. Councilmember Graham (2003 to 2010);
- Calvin Woodland, Chief of Staff for D.C. Councilmember Graham.

V. CHRONOLOGY OF EVENTS

Spring 2007	The Washington Metro Area Transit Authority ("Metro") issued Requests for Expressions of Interest for the redevelopment of Metro-owned land at Florida Avenue and 8th Street, NW, in the District of Columbia ("Florida Avenue Project").
August 24, 2007	Metro issued a Joint Development Solicitation to six of the twelve developers that expressed interest.
October 5, 2007	Metro received final proposals from three development teams: Banneker Ventures LLC ("Banneker Ventures"), LaKritz Adler Development ("LaKritz Adler"), and Moddie Turay Company.
December 16, 2007	Banneker Ventures's development partner, Donatelli Development, withdrew from the Florida Avenue Project development team.
January 24, 2008	The Office of the Chief Financial Officer for the District of Columbia awarded W2I, a joint venture between W2Tech, a company formed by Banneker Ventures principal Warren Williams and his wife, and Intralot, an international lottery vendor, a contract to administer the D.C. lottery. The contract was subject to the approval of the D.C. Council.
January 28, 2008	Metropolis Development Company, LLC ("Metropolis") joined the Banneker Ventures development team.
February 26, 2008	The Metro staff team assigned to evaluate the proposals recommended that Metro select Banneker Ventures to develop the Florida Avenue Project.
April 24, 2008	The Planning, Development and Real Estate Committee ("PDREC") of the Metro Board of Directors ("Metro Board") considered Metro's recommendation to select Banneker Ventures to develop the Florida Avenue Project. District of Columbia Councilmember Jim Graham moved to defer the PDREC's vote by sixty days. The Committee Members voted unanimously in favor of Councilmember Graham's motion.

May 29, 2008	Mr. Williams, his wife, and two lobbyists for W2I met with Councilmember Graham and his staff at Councilmember Graham's office to discuss the lottery contract.
June 26, 2008	The PDREC voted to approve Metro's recommendation to select Banneker Ventures as the developer for the Florida Avenue Project. The resolution reflected Councilmember Graham's request that the final term sheet further define the roles of the development firms involved in the project as well as include an affordable housing component.
Summer 2008	Banneker Ventures and LaKritz Adler discussed a potential partnership for the Florida Avenue Project.
October 24, 2008	Metro learned that Banneker Ventures intended to purchase a lot adjacent to the Florida Avenue Project and include the lot in the development.
December 16, 2008	The D.C. Council voted to reject W2I's lottery contract.
March 6, 2009	Banc of America Community Development Corporation ("BACDC") joined the Banneker Ventures development team.
April 23, 2009	The Metro Board unanimously voted to extend Metro and Banneker Ventures's exclusive negotiation period by 120 days to provide the parties with additional time to negotiate the terms of the Florida Avenue Project. Councilmember Graham abstained from the vote.
September 17, 2009	Metro received an independent appraisal for the Florida Avenue Project. The second appraisal for the capitalized lease value of the property reflected a significant depreciation in value compared to the initial appraisal for its sale.
September 24, 2009	The Metro Board unanimously approved a motion to provide Metro and Banneker Ventures with a second 120-day extension to negotiate the terms of the Florida Avenue Project.
January 14, 2010	The PDREC voted a third time to extend Banneker Ventures's exclusive negotiation period until March 31, 2010. Metro Board Member Peter Benjamin abstained from the vote and Alternate Board Member Councilmember Michael Brown voted against the motion.
January 28, 2010	The Metro Board voted to extend the exclusive negotiation period until March 31, 2010. Councilmember Graham abstained from the vote.

March 14, 2010	Metro learned that BACDC withdrew from the Florida Avenue Project.
March 18, 2010	Councilmember Graham instructed the Secretary for the Metro Board to remove the Florida Avenue Project from the March 25, 2010 PDREC agenda. The PDREC did not discuss the Florida Avenue Project.
March 25, 2010	At the Metro Board meeting, Councilmember Graham moved to provide Metro and Banneker Ventures with additional time to negotiate the terms of the Florida Avenue Project. Deputy Mayor Neil Albert moved to table the matter. The Metro Board unanimously voted to approve Deputy Mayor Albert's motion.
March 31, 2010	The exclusive negotiation period between Metro and Banneker Ventures expired.
July 21, 2011	Metro sold the Florida Avenue property to JBG Construction for $10.2 million.

VI. BACKGROUND

A. Standards of Conduct

Metro has adopted and periodically revised the Standards of Conduct that govern all members of the Board of Directors in all activities relating to their positions as Board Members. The Standards of Conduct also apply to individuals, corporations, and other entities that have an actual or prospective business relationship with Metro.[3]

Because the activities and events pertinent to this report took place between 2007 and 2010, Cadwalader used the 2006 and 2010 versions of the Standards of Conduct to evaluate the Board Members' conduct. The provision of the Standards of Conduct relevant to the investigation is identical in both the 2006 and 2010 versions.

[3] Code of Ethics for Members of the WMATA Board of Directors, Article I (2011), *available at* http://wmata.com/about_metro/docs/code_of_ethics.pdf. The investigation did not evaluate the conduct of the Metro staff. Any investigations of staff conduct should be conducted by Metro's Inspector General.

The relevant provision of the Standards of Conduct at issue in this investigation is:

> Article III § A: Public funds must be expended in a manner which assures the highest degree of confidence and public trust in WMATA. It is imperative that Board Members in their private financial relationships and *in their official conduct strictly avoid engaging in actions which create conflicts of interest or the appearance of a conflict of interest. It is likewise imperative that Board Members act impartially in their official conduct by avoiding any actions which might result in favored treatment or appearances thereof toward any individual, private organization, consultant, contractor or potential consultant or contractor. Each Board Member while acting in his/her capacity as a WMATA Board Member, has a duty to place the public interest foremost in any dealings involving WMATA* (emphasis added).

B. Facts

1. Metro's Selection of Banneker Ventures as Developer

In early 2007, Metro issued Requests for Expressions of Interest for its Shaw-Howard/Florida Avenue joint development sites ("Florida Avenue Project").[4] The proposed joint development project would include a 3,800 sq. ft. parcel on Florida Avenue at 9th Street, NW; a 8,600 sq. ft. parcel on Florida Avenue between 8th and 9th Streets, NW; and a 16,500 sq. ft. parcel on Florida Avenue between 7th and 8th Streets, NW (collectively, the "Florida Avenue Property").[5] Metro received twelve responses to the Requests for Expressions of Interest.[6] Rosalyn Doggett (Metro Senior Transit Oriented Development Specialist), who served as the project manager for the Florida Avenue Project, reviewed the proposals and asked six developers to submit more detailed applications.[7]

[4] Memorandum from Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, to John Catoe, Jr., General Manager, WMATA (Feb. 26, 2008) ("Bottigheimer Feb. 26, 2008 Memo").

[5] *Id*.

[6] Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Rosalyn Doggett Interview Memorandum (July 2, 2012) ("Doggett Interview Memo") (stating twelve firms responded to the Florida Avenue Property solicitation).

[7] Bottigheimer Feb. 26, 2008 Memo; *see also* Doggett Interview Memo (explaining that Ms. Doggett reviewed the twelve initial responses).

October 11, 2012

In the fall of 2007, Metro received proposals from three of the six developers: Banneker Ventures LLC ("Banneker Ventures"),[8] LaKritz Adler Development ("LaKritz Adler"), and Moddie Turay Company ("Moddie Turay").[9] Metro then formed an evaluation team composed of Ms. Doggett and representatives from Metro's Office of Station Area Planning and Asset Management, Office of the General Counsel, and Office of Joint Development and Adjacent Construction.[10]

Ms. Doggett and her team decided that, as a threshold matter, they would reject any proposal which did not offer more than $7.5 million, the value of the Florida Avenue Property determined by a recent independent appraisal.[11] According to Ms. Doggett's calculations, the net present

[8] Banneker Ventures is a minority-owned construction firm formed in 2005. At the time Ms. Doggett and her team recommended Banneker Ventures's proposal to the Metro Board of Directors, the principals of the firm were Omar Karim and Warren Williams. Banneker Ventures website, *available at* http://bannekerventures.com/about_overview.html (last visited Sept. 20, 2012); Letter from Omar Karim, Principal, Banneker Ventures, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA (June 26, 2007). Banneker Ventures was also the subject of another recent investigative report released on March 11, 2011. The D.C. Council commissioned an investigation regarding multi-million dollar contracts which the District of Columbia Housing Authority oversaw for the construction and renovation of city recreation centers, ball fields, and parks. The Special Counsel investigated Banneker Ventures's central role in these contracts, and found that Banneker Ventures engaged in certain questionable contracting practices. The investigation referred the contracting matters to the United States Attorney for further examination. The Special Counsel also recommended further inquiry into the question of whether Mr. Karim provided false testimony in the course of the investigation. Robert P. Trout, *et al.*, Report of the Special Counsel to the Special Committee on Investigation of Capital Projects of the Department of Parks and Recreation (2011), *available at* http://dcclims1.dccouncil.us/media/libraries_parks_rec/capprojectinvestigation_finalreport_03112011.pdf.

[9] Bottigheimer Feb. 26, 2008 Memo.

[10] *Id*. Ms. Doggett also asked Derrick Woody, Coordinator of the Great Streets Initiative for the Office of the Deputy Mayor for Planning and Economic Development, who had experience in joint development projects, to provide input on the proposals. Mr. Woody strongly recommended that Metro select LaKritz Adler to develop the Florida Avenue Property because its proposal contained the most detailed plans and had the greatest potential for economic and community impact. Although Ms. Doggett typically valued Mr. Woody's opinion highly, she did not follow his recommendation for the Florida Avenue Property because the value of LaKritz Adler's proposal was below the appraised value of the property. Doggett Interview Memo; E-mail from Derrick Woody, Coordinator of the Great Streets Initiative for the Office of the Deputy Mayor for Planning and Economic Development, to Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA (Nov. 16, 2007, 10:19 a.m. EST).

[11] Memorandum from Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA (Jan. 29, 2008) ("Doggett Jan. 29, 2008 Memo").

value of the offers in the proposals were as follows: $14 million, Banneker Ventures; $11.8 million, Moddie Turay; and $6 million, LaKritz Adler.[12] Ms. Doggett's calculations led her and her team to eliminate LaKritz Adler's $6 million proposal because it did not provide a sufficient financial benefit to Metro.[13]

After interviewing the development firms and conducting additional due diligence,[14] Ms. Doggett and her evaluation team determined that the qualifications of the two remaining firms, Banneker Ventures and Moddie Turay, and the development projects outlined in their proposals were very similar.[15] The evaluation team found that the two finalists were relatively inexperienced but had partnered with more experienced development firms.[16] The evaluation team determined also that the proposals submitted by Banneker Ventures and Moddie Turay were equivalent in other respects, such as reflecting the principles of transit-oriented development.[17]

On January 29, 2008, Ms. Doggett and her team sent a memorandum to Nathaniel Bottigheimer (Metro Assistant General Manager of Planning and Joint Development), recommending that the Metro Board of Directors ("Metro Board") select Banneker Ventures to develop the Florida Avenue Property.[18] The selection of a developer in a joint development project by the Metro Board only establishes a period of time in which that developer has the exclusive right to negotiate a binding development agreement with Metro.[19] Ms. Doggett and her team explained

[12] *Id*. Based on a sixty-year lease period.

[13] *Id*.; s*ee also* Doggett Interview Memo (explaining that Ms. Doggett eliminated LaKritz Adler from consideration first because its proposal did not exceed the appraised value of the property).

[14] Doggett Jan. 29, 2008 Memo.

[15] *Id*.; *see also* Bottigheimer Feb. 26, 2008 Memo.

[16] Doggett Jan. 29, 2008 Memo. Specifically, Ms. Doggett observed that Banneker Ventures's development partner Metropolis had extensive experience in developing residential buildings with ground floor retail and recently had completed a joint development project with WMATA, while Banneker Ventures was less experienced. *See also* Doggett Interview Memo (stating that neither Banneker Ventures nor Moddie Turay presented strong qualifications); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Nathaniel Bottigheimer Interview Memorandum (July 3, 2012) ("Bottigheimer Interview Memo") (explaining that he had concerns about Banneker Ventures's level of experience, but those concerns were mitigated because Banneker Ventures partnered with a more experienced developer).

[17] Doggett Jan. 29, 2008 Memo.

[18] *Id.*

[19] Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements, §§ 1.6, 1.7.

in the memorandum that they recommended Banneker Ventures because its financial offer of $14 million was clearly superior to Moddie Turay's offer of $11.8 million.[20] Ms. Doggett and her team also based their recommendation on the fact that, unlike Banneker Ventures's proposal, Moddie Turay's proposal included development on an adjacent non-Metro-owned parcel which could complicate the project.[21]

2. Metro Board's Approval of Metro's Selection of Banneker Ventures as Developer

a. Composition of the Metro Board of Directors

The Metro Board is composed of eight voting Principal Directors and eight Alternate Directors. Maryland, the District of Columbia, Virginia, and the federal government each appoint two Principal Directors and two Alternate Directors.[22] For the District of Columbia, the D.C. Council appoints the Metro Board Members.[23] One of the Metro Board Members from the District of Columbia is selected to represent the D.C. Council, while the other Board Member is selected to represent the Mayor.[24]

In 2007, D.C. Councilmember Jim Graham and Emeka Moneme represented the District of Columbia as Principal Directors on the Metro Board. Councilmember Graham joined the Metro Board in 1999 and served in that capacity until 2010.[25] Throughout his tenure on the Metro Board, Councilmember Graham also represented Ward 1 on the D.C. Council.[26] District of

[20] Doggett Jan. 29, 2008 Memo.

[21] *Id.*

[22] WMATA Compact, art. III § 5(a), D.C. Code § 9-1107.1. The federal government has not appointed a second Alternate Director as of the time of this report.

[23] *Id.*

[24] *See* Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Elizabeth Hewlett Interview Memorandum (July 19, 2012) ("Hewlett Interview Memo") (explaining that Deputy Mayor Albert was the Mayor's representative); *see also* Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Neil Albert Interview Memorandum (June 29, 2012) ("Albert Interview Memo") (stating that he was the Mayor's representative on the Metro Board).

[25] Deposition of Jim Graham, Councilmember, Washington, D.C. (July 27, 2012) at 13:17–18 (confirming that he served from January 1, 1999 to December 31, 2010). Councilmember Graham cooperated with the investigation in providing documents and testimony under oath. During his testimony, at the direction of counsel, he did not answer one question on the grounds of legislative immunity.

[26] *Jim Graham, Ward 1*, D.C. Council website, *available at* http://dcclims1.dccouncil.us/jimgraham (last visited Aug. 16, 2012).

Columbia Mayor Adrian Fenty selected Mr. Moneme to serve on the Metro Board. Mr. Moneme served on the Metro Board from early 2007 to September 2008.[27] Both before and during Mr. Moneme's appointment to the Metro Board, he served as the Director of the D.C. Department of Transportation.[28] Neil Albert replaced Mr. Moneme on the Metro Board in November 2008 and served in that capacity until 2011. During his tenure on the Metro Board, Mr. Albert was the Deputy Mayor for Economic Development.[29]

b. Metro Board's Process for Approving Joint Development Projects

According to the Washington Metropolitan Area Transit Authority Compact, the Metro Board may enter into and perform contracts, leases, and agreements related to the development of Metro property.[30] Joint development projects, like any other project or proposal, are assigned to a Metro Board Committee.[31] The Committee discusses the details of the project and recommends to the full Metro Board the action that Metro should take to negotiate with the selected developer.[32] The Metro Board often adopts the Committee recommendations.[33]

In 2008, the Planning, Development, and Real Estate Committee ("PDREC") oversaw joint development projects.[34] From 2008 to 2011, all Metro Board Members, including alternate Board Members, served on the PDREC.[35] Deputy Mayor Albert was the Chair of the PDREC

[27] Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Emeka Moneme Interview Memorandum (July 3, 2012) ("Moneme Interview Memo").

[28] *Id*.

[29] *Neil Albert Sworn in as Metro Board Member*, WMATA (Nov. 6, 2008), *available at* http://www.wmata.com/about_metro/news/PressReleaseDetail.cfm?ReleaseID=2335; *Neil O. Albert*, Holland and Knight, *available at* http://www.hklaw.com/Neil-Albert/ (last visited Aug. 16, 2012).

[30] *See* WMATA Compact, art. v § 12(f), D.C. Code § 9-1107.1.

[31] Bylaws of the Washington Metropolitan Area Transit Authority Board of Directors, Article XII § (C), adopted July 21, 2011, *available at* http://wmata.com/about_metro/docs/Bylaws.pdf.

[32] *See generally id.* ("The Committee specifically reviews and recommends to the Board actions on Real Estate acquisitions and Real Estate dispositions"); *see also* Hewlett Interview Memo (explaining that the Metro Board had several committees that would recommend action to the Metro Board).

[33] Hewlett Interview Memo (stating that the Metro Board usually accepted committee recommendations); *see also* Bottigheimer Interview Memo (explaining that, in the context of joint development projects, the Metro Board rarely voted contrary to a Metro joint development staff recommendation).

[34] Procedures of the Washington Metropolitan Area Transit Authority Board of Directors, Article VII § (A), adopted Feb. 16, 2006.

[35] Proposed Committee Assignments WMATA Board of Directors, Feb. 28, 2008, *available at* http://wmata.com/about_metro/board_of_directors/board_docs/022808_ReptbyChairmanC2008CmteAssi

from February 2009 to January 2010, and Councilmember Graham was the Chair of the PDREC from January 2010 to January 2011.[36]

In joint development projects, Board Members deferred largely to their colleagues in whose jurisdiction the project resided for two principal reasons. First, any action by the Metro Board is required under the Metro Compact to have the affirmative vote of at least one Board Member from each jurisdiction.[37] This is commonly known at Metro as a jurisdictional veto, and its practical effect is that a "no" vote or abstention by two Board Members from the same jurisdiction can block a proposed action by the Metro Board.[38] Second, Board Members generally believed that the Board Members in the jurisdiction where a joint development project resided had the most knowledge of local issues.[39] In the Florida Avenue Project, the Metro

gnments.pdf; Proposed Committee Assignments Metro Board of Directors, Jan. 29, 2009, *available at* http://wmata.com/about_metro/board_of_directors/board_docs/012909_RptbyChairmanC.pdf; Revised Committee Assignments Metro Board of Directors, Jan. 28, 2010, *available at* http://wmata.com/about_metro/board_of_directors/board_docs/012810_REV2010CmteMembershipProp12510.pdf.

[36] Agenda from Planning, Development and Real Estate Committee, WMATA (Mar. 12, 2009), *available at* http://www.wmata.com/about_metro/board_of_directors/board_docs/031209_Agenda.pdf; Revised Committee Assignments Metro Board of Directors, Jan. 28, 2010, *available at* http://wmata.com/about_metro/board_of_directors/board_docs/012810_REV2010CmteMembershipProp12510.pdf.

[37] WMATA Compact, art. iii § 8(a), D.C. Code § 9-1107.1. This rule does not apply to a plan of financing or a mass transit plan.

[38] Bylaws of the Washington Metropolitan Area Transit Authority Board of Directors, Article VIII § (H), adopted July 21, 2011, *available at* http://wmata.com/about_metro/docs/Bylaws.pdf.

[39] Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Peter Benjamin Interview Memorandum (July 11, 2012) ("Benjamin Interview Memo") (stating that in D.C. joint development projects the concerns of D.C. voting Board Members carried more weight); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Mortimer Downey Interview Memorandum (Aug. 29, 2012) ("Downey Interview Memo") (stating that he was informed by Peter Benjamin that, because of the jurisdictional veto, the Metro Board gave deference to the Metro Board Members where the joint development resided); Hewlett Interview Memo (stating that, typically, Board Members from the jurisdiction would be more concerned about a joint development project, and the other Board Members would not oppose the project if it was in the interest of Metro); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Catherine Hudgins Interview Memorandum (July 23, 2012) ("Hudgins Interview Memo") (stating that it was not unusual for Board Members to be more concerned about projects in their jurisdiction); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Jeffrey McKay Interview Memorandum (Aug. 31, 2012) ("McKay Interview Memo") (stating that Board Members typically deferred to the Metro Board Members from the jurisdiction of the joint development project); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Chris Zimmerman Interview Memorandum (July 16, 2012) ("Zimmerman Interview Memo") (stating that Board Members typically did not get involved in

Board Members gave deference to the opinions of Councilmember Graham and Deputy Mayor Albert as issues arose during the negotiations.[40]

c. Metro Board's Decision to Defer Selecting Banneker Ventures to Develop the Florida Avenue Property

On April 24, 2008, the PDREC considered Metro's recommendation to select Banneker Ventures to develop the Florida Avenue Property.[41] Councilmember Graham expressed concerns about the extent of Banneker Ventures's experience and financial capabilities, and asked to review the proposals of all three finalists.[42] He then moved to defer the Metro Board's decision for at least 60 days until the June 26, 2008 PDREC meeting.[43] The PDREC unanimously approved the deferral.[44] To address Councilmember Graham's concerns, the Metro Board also instructed Ms. Doggett (Metro Senior Transit Oriented Development Specialist) and her joint development staff to conduct additional due diligence on Banneker Ventures, particularly regarding any outstanding taxes that members of the Banneker Ventures's team may have owed to the District of Columbia.[45]

Ms. Doggett's additional inquiries uncovered no problems with Banneker Ventures and established that none of the principals of Banneker Ventures owed any outstanding taxes to the District of Columbia.[46] On June 24, 2008, Councilmember Graham met with Ms. Doggett, Mr. Bottigheimer (Metro Assistant General Manager of Planning and Joint Development), Carol O'Keeffe (Metro General Counsel), Mr. Moneme (Metro Board Member) and two additional Metro joint development staff members to discuss the additional information that Ms. Doggett and her team had gathered about Banneker Ventures.[47] At the meeting, Councilmember Graham

projects outside their individual jurisdictions); *see also* Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Gordon Linton Interview Memorandum (Aug. 29, 2012) ("Linton Interview Memo") (stating that Councilmember Graham's concerns about Banneker Ventures arose from issues Banneker Ventures had related to the District of Columbia).

[40] *Id*.

[41] Agenda from Planning, Development and Real Estate Committee, WMATA (Apr. 24, 2008).

[42] Handwritten notes from Metro Board Executive Session, Rosalyn Doggett (Apr. 24, 2008).

[43] Meeting Minutes, Planning, Development and Real Estate Committee Meeting, WMATA (Apr. 24, 2008).

[44] *Id*.

[45] Handwritten notes from Metro Board Executive Session, Rosalyn Doggett (Apr. 24, 2008).

[46] Letter from Omar Karim to Joel Washington, Director of WMATA's Office of Station Area Planning and Asset Management, WMATA (May 9, 2008).

raised additional concerns about Banneker Ventures, including its financial resources and its ability to manage the project.[48]

d. Metro Board's Decision to Select Banneker Ventures to Develop the Florida Avenue Property

On June 26, 2008, the PDREC reconsidered Metro's recommendation to select Banneker Ventures as the developer for the Florida Avenue Property.[49] Councilmember Graham proposed that the Metro Board's final resolution selecting Banneker Ventures include an affordable housing requirement, policy guidelines on business ethics and integrity, and further definition of the roles and responsibilities of the members of the development team.[50] Councilmember Graham abstained from the PDREC vote that approved Metro's selection of Banneker Ventures.[51] Later that day, the entire Metro Board, including Councilmember Graham, unanimously voted to approve the resolution that selected Banneker Ventures to develop the Florida Avenue Property.[52] The resolution included Councilmember Graham's stipulations regarding affordable housing, business ethics, and further definition of the roles of the development team.[53]

3. Impediments to Metro and Banneker Ventures's Negotiations

Over the next two years, Metro and Banneker Ventures confronted numerous obstacles to finalizing a term sheet, including Banneker Ventures's lack of development experience, the absence of a clear Metro policy on key aspects of the term sheet, concerns and inquiries raised by Metro Board Members, and the financial and economic crisis that impacted the real estate market. The inability of Banneker Ventures and Metro to anticipate and solve these problems

[47] Doggett Interview Memo (recalling that she attended a meeting with Councilmember Graham on June 24, 2008); *see also* E-mail from Nathaniel Bottigheimer, Assistant General Manager of Planning and Joint Development, WMATA, to Carol O'Keeffe, General Counsel, WMATA, and Rosalyn Doggett, Senior Transit Oriented Specialist, WMATA and others (June 18, 2008, 11:44 a.m. EDT).

[48] Handwritten notes from Rosalyn Doggett (June 24, 2008).

[49] Meeting Minutes, Planning, Development and Real Estate Committee Meeting, WMATA (June 26, 2008).

[50] *Id*.

[51] *Id.*

[52] Meeting Minutes, 1331st Meeting of the Board of Directors, WMATA (June 26, 2008).

[53] *Id.*

caused numerous delays that ultimately prevented the parties from presenting a final term sheet to the Metro Board before Banneker Ventures's exclusive negotiation period expired.[54]

a. The Affordable Housing Requirement

Although the Metro Board long considered affordable housing to be an important aspect of joint development projects,[55] it did not implement or adopt any formal requirements for affordable housing in its joint development projects in general[56] or in the proposal submission requirements for the Florida Avenue Project specifically.[57] As a result, even though Banneker Ventures's original proposal indicated that the Florida Avenue Project would include affordable housing, the term sheet between Banneker Ventures and Metro that was presented to the Metro Board on June 26, 2008 did not include an affordable housing component.[58] Following the June 26, 2008 Metro Board meeting, Ms. Doggett and her colleagues who were responsible for managing the Florida Avenue Project were unsure how they should implement the Metro Board's vague requirement that the Florida Avenue Project include some unspecified amount of affordable housing.[59] The Metro joint development staff's uncertainty caused delays in their negotiations with Banneker Ventures.[60]

[54] In our investigation, Mr. Karim of Banneker Ventures produced to Cadwalader a confidential attorney-client privileged memorandum from Metro's General Counsel to Metro's General Manager for distribution to the Metro Board regarding a legal question about the Florida Avenue Project. During his testimony under oath, Mr. Karim stated that he was "not sure" how or when he obtained the internal Metro memorandum. Deposition of Omar Karim, Principal, Banneker Ventures (July 23, 2012) at 60:20-61:19.

[55] Doggett Interview Memo (stating that some Board Members displayed a great interest in affordable housing); *see also* Albert Interview Memo (explaining that he wanted the Florida Avenue Project to include 35% affordable housing).

[56] Bottigheimer Interview Memo (stating that the Metro Board did not adopt a policy proposal he presented to the Board addressing affordable housing); *see also* Doggett Interview Memo (explaining that Mr. Bottigheimer presented an affordable housing policy to the Metro Board that was not adopted).

[57] Memorandum from Joshua Montague, Assistant General Counsel, WMATA, to Carol B. O'Keeffe, General Counsel, WMATA, Bruce P. Heppen, Deputy General Counsel, WMATA, Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, and Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, Re: Florida Avenue Affordable Housing (May 7, 2009).

[58] *Id*.

[59] Doggett Interview Memo (explaining that Metro joint development staff were uncertain about how to incorporate affordable housing into the project).

[60] *Id*.

Following the June 26, 2008 meeting, Banneker Ventures responded to the Metro Board's affordable housing requirement by lowering its bid.[61] In April 2009, Banneker Ventures reduced the value of its bid from $14 million to $5.8 million.[62] Banneker Ventures's new offer was below the value of LaKritz Adler's $6 million bid and Moddie Turay's $11.8 million bid; it also fell well below the initial appraised value of $7.5 million for the property.[63]

In May 2009, Metro agreed to order a new appraisal for the Florida Avenue Project that would measure the impact of the affordable housing requirement on the value of the property.[64] The appraisal provided a significantly lower estimate of the value of the Florida Avenue Property.[65] The new appraisal caused Banneker Ventures to lower its bid further.[66] The Metro Board responded by questioning whether Metro should proceed with the development in such a poor real estate market.[67]

b. Adjacent Property

Metro joint development staff and Banneker Ventures also spent over a year discussing different lease and sale options for the Florida Avenue Property. In October 2008, Mr. Karim of Banneker Ventures told Joshua Montague (Metro Assistant General Counsel) that he had entered into an agreement to purchase a parcel of land adjacent to the Florida Avenue Property.[68] In

[61] *Id*.; Bottigheimer Interview Memo (stating that the revised proposal including affordable housing was significantly lower than Banneker Ventures's original proposal).

[62] Draft Memorandum, Re: Florida Avenue, unknown author (Apr. 30, 2009).

[63] E-mail from Nathaniel Bottigheimer, Metro Assistant General Manager for Planning and Joint Development, WMATA, to Emeka Moneme, Metro Board Member (May 7, 2009, 6:58 p.m. EDT).

[64] *Id*.

[65] Comparison of Terms – Shaw-Howard U/Florida Avenue Site, author unknown, WMATA (Mar. 16, 2010). An August 2007 appraisal estimated the appraised land value of the property as $7.5 million, not including an estimated $2.3 million reduction for costs of building over Metro tunnels. The 2010 appraisal estimated a capitalized lease value of approximately $2 million.

[66] Handwritten notes from Rosalyn Doggett (Sept. 29, 2009).

[67] Bottigheimer Interview Memo (explaining that Board Members asked why Metro should dispose of the property at that time because current real estate market conditions would not allow Metro to receive maximum value for the property); *see also* Presentation to the Planning, Development and Real Estate Committee in Executive Session, Amended Term Sheet for Lease of Shaw-Howard U/Florida Avenue Joint Development Site (Jan. 14, 2010).

[68] E-mail from Rosalyn Doggett, Senior Development Specialist, WMATA, to Joshua Montague, Assistant General Counsel, WMATA (Oct. 24, 2008, 10:57 a.m. EDT). Mr. Karim stated in his testimony that the adjacent parcel was the same one that Moddie Turay included in its bid for the Florida

November 2008, Mr. Montague informed Mr. Karim that expanding the development property to include the adjacent lot was not part of the agreed term sheet, and that the lease options for such a development were not feasible for Metro because they limited Metro's right to terminate Banneker Ventures's lease in the event of default.[69] Nonetheless, Mr. Montague subsequently agreed to review Banneker Ventures's proposal to include the adjacent lot.[70]

In September 2009, after months of negotiations on potential lease arrangements, Mr. Karim and Nathaniel Bottigheimer (Metro Assistant General Manager for Planning and Joint Development) considered whether Banneker Ventures should buy the Florida Avenue Property outright and began negotiating terms of a sale agreement.[71] Mr. Bottigheimer supported the sale option because it would simplify the transaction and allow Banneker Ventures more leeway in the development of the parcels.[72] Councilmember Graham strongly opposed the idea of a sale because it would be difficult to unwind the transaction if Banneker Ventures did not develop the property.[73] In November 2009, after Councilmember Graham and Mr. Karim met to discuss the issue,[74] Banneker Ventures abandoned the sale option and reverted to the lease agreement in the proposed term sheet.[75]

Avenue Project. Mr. Karim explained that a contract for Banneker Ventures to assume control of the adjacent property was never executed. Karim Dep. 94:15-95:2 (July 23, 2012).

[69] Memorandum from Joshua Montague, Assistant General Counsel, WMATA, to Carol B. O'Keeffe, General Counsel, WMATA, and Bruce P. Heppen, Deputy General Counsel, WMATA (Oct. 21, 2009).

[70] *Id*.

[71] E-mail from Nathaniel Bottigheimer, Assistant General Manager of Planning and Joint Development, WMATA, to Candace E. Smith, Office of the General Manager, WMATA (Sept. 29, 2009, 8:38 a.m. EDT).

[72] Bottigheimer Interview Memo (explaining that the Florida Avenue Property should have been classified as excess property and sold).

[73] E-mail from Jim Graham, Councilmember, Washington, D.C., to Carol O'Keeffe, General Counsel, WMATA, Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C., Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, and John Catoe, Jr., General Manager, WMATA (Oct. 20, 2009, 5:44 p.m. EST).

[74] E-mail from Omar Karim, Principal, Banneker Ventures, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, and Steve Goldin, Director of Real Estate, WMATA (Nov. 4, 2009, 10:51:56 a.m. EST).

[75] E-mail from Omar Karim, Partner, Banneker Ventures, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA (Nov. 3, 2009, 1:58 p.m. EST).

c. Changes in Banneker Ventures's Development Team

Changes in the development team at Banneker Ventures also delayed the negotiations. When Banneker Ventures submitted its proposal in October 2007, it had partnered with Donatelli Development ("Donatelli"),[76] a firm with experience developing projects similar to the Florida Avenue Property.[77] In the fall of 2007, after Donatelli withdrew from the Florida Avenue Project, Mr. Karim approached Merrick Malone and Scott Pannick of Metropolis Development Company ("Metropolis") about a potential partnership.[78] Metropolis submitted a letter to Banneker Ventures on January 28, 2008 stating its interest in serving as a co-developer.[79] Banneker Ventures immediately informed Metro of Metropolis' participation.[80] Ms. Doggett (Metro Senior Transit Oriented Development Specialist) took the partnership between Banneker Ventures and Metropolis into consideration when evaluating the bids for the Florida Avenue

[76] Doggett Jan. 29, 2008 Memo; Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Christopher Donatelli Interview Memorandum (September 14, 2012) ("Donatelli Interview Memo") (stating Donatelli Development joined the Banneker Ventures team in the summer of 2007).

[77] Draft Memorandum regarding FL Ave EOI's Supplemental Information, unknown author, undated.

[78] Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Merrick Malone Interview Memorandum (Aug. 16, 2012) ("Malone Interview Memo") (stating that Mr. Karim approached Metropolis and offered a partnership on the Florida Avenue Project).

[79] Letter from Merrick Malone, Principal and Executive Vice President, Metropolis Development, to Omar Karim, Principal, Banneker Ventures (Jan. 28, 2008). Merrick Malone of Metropolis indicated during an interview by Cadwalader that he submitted the letter solely because Deputy Mayor Albert, who was not a Metro Board Member at the time, asked him to lend Metropolis's name to the Florida Avenue Project until Banneker Ventures could find another co-developer. Malone Interview Memo. Scott Pannick of Metropolis also apparently left a voicemail for Joshua Adler of LaKritz Adler shortly after the Metro Board selected Banneker Ventures to develop the Florida Avenue Property which informed Mr. Adler that Metropolis was not "going to be involved with Banneker on Metro sites." E-mail from Joshua Adler, Principal, LaKritz Adler, to Robert LaKritz, Principal, LaKritz Adler (July 10, 2008, 1:56 p.m. EDT). Mr. Adler stated that, in the spring of 2008, he had lunch with Mr. Pannick and Mr. Malone of Metropolis and that they told him Metropolis did not have an agreement with Banneker Ventures to be co-developers on the Florida Avenue Project. Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Joshua Adler Interview Memorandum (Sept. 25, 2012) ("Adler Interview Memo"). Mr. Karim did not recall that Metropolis did not intend to participate in the Florida Avenue Project. Deposition of Omar Karim, Principal, Banneker Ventures (Aug. 21, 2012) at 176:22–177:6 (stating that he did not recall Metropolis being involved only so Banneker Ventures could obtain approval from Metro), while Deputy Mayor Albert could not recall the reason for Metropolis's withdrawal. *See* Albert Interview Memo (stating that he did not remember why Metropolis dropped out of the Florida Avenue Project).

[80] Doggett Jan. 29, 2008 Memo.

Project.[81] Metro became aware that Metropolis was no longer involved in the Florida Avenue Project in late 2008, when Mr. Karim's attorney informed Mr. Montague (Metro Assistant General Counsel) that Banneker Ventures "bought out" Metropolis.[82] Mr. Montague informed Mr. Karim's attorney that Metropolis's absence might be a problem because WMATA approved the resolution to select Banneker Ventures, in part, on the basis that all members of the development team would participate in the Florida Avenue Project.[83]

In March 2009, Banc of America CDC ("BACDC") replaced Metropolis as the partner for Banneker Ventures.[84] Although BACDC was unknown to Metro, the subsequent due diligence, conducted at the request of the Metro Board, revealed that the BACDC principal received favorable references for both development management and construction oversight expertise, and that BACDC had completed other local development projects.[85] BACDC partnered with Banneker Ventures on the Florida Avenue Project for a year, and withdrew from the project by March 2010.[86] Banneker Ventures did not identify a new development partner.[87]

[81] *Id*.

[82] E-mail from Joshua Montague, Assistant General Counsel, WMATA, to Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA (Dec. 3, 2008, 11:23 a.m. EST). Mr. Karim believed that Metropolis dropped out of the Florida Avenue Project at some point in the fall of 2008 and could not recall when he informed Metro joint development staff that the composition of his team had changed. Karim Dep. 169:1–5, 169:13–18 (Aug. 21, 2012).

[83] E-mail from Joshua Montague, Assistant General Counsel, WMATA, to Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA (Dec. 3, 2008, 11:23 a.m. EST).

[84] Letter from Maurice Perry, Vice President, Banc of America CDC, to Omar Karim, Principal, Banneker Ventures (Mar. 6, 2009).

[85] Memorandum from John Catoe, Jr., General Manager, WMATA, to Chairman and Members of the Board of Directors, WMATA (Apr. 3, 2009); *see also* Doggett Interview Memo (stating that Ms. Doggett called BACDC principal Maurice Perry's references and received positive recommendations from each one).

[86] E-mail from Steve Goldin, Director of Real Estate, WMATA, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, and Joshua Montague, Assistant General Counsel, WMATA (Mar. 14, 2010, 6:15 p.m. EDT); *see also* E-mail from Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA (Mar. 14, 2010, 8:38 p.m. EST). Mr. Karim stated that BACDC left the development team because they preferred the transaction to be structured as a sale rather than as a lease. Karim Dep. 69:7–22 (July 23, 2012).

[87] E-mail from Steve Goldin, Director of Real Estate, WMATA, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, and Joshua Montague, Assistant General Counsel, WMATA (Mar. 14, 2010, 6:15 p.m. EDT).

Ms. Doggett (Metro Senior Transit Oriented Development Specialist) was concerned about Banneker Ventures's lack of notification to Metro when its development partners withdrew from the project, so she discussed with the representatives from Donatelli and Metropolis the reason why they withdrew from the development project.[88] According to Ms. Doggett, Larry Clark from Donatelli told her they were unable to work with Banneker Ventures, and Mr. Malone of Metropolis told her that Mr. Karim had been unwilling to give them sufficient control over the development and construction of the project.[89] According to Ms. Doggett, Mr. Malone also informed her that his firm withdrew because it did not want to anger Councilmember Graham by working on the Florida Avenue Project with Banneker Ventures.[90]

4. Expiration of Exclusive Negotiation Period

The Metro Board granted two extensions to Banneker Ventures before January 2010 to address the issues that arose during negotiations.[91] On January 28, 2010, Deputy Mayor Albert moved to extend the negotiation period to March 31, 2010.[92] The Metro Board unanimously voted to extend the negotiation period.[93] Councilmember Graham abstained from the vote.[94]

In February 2010, Councilmember Graham became the Chair of the PDREC. On March 18, 2010, Councilmember Graham removed the Florida Avenue Project from the agenda of the

[88] Doggett Interview Memo (explaining that she spoke with Donatelli and Metropolis to discuss why they dropped out).

[89] *Id*. (stating that Donatelli told her they were unable to work with Banneker Ventures, and Metropolis told her that Banneker Ventures wanted too much control over the development process). Mr. Donatelli stated in his interview that he withdrew because he was concerned about Banneker Ventures's ability to handle the project. Donatelli Interview Memo. *See also* Malone Interview Memo (stating that he did not recall a conversation with Ms. Doggett about the Florida Avenue Project, but he stated that he did not want to participate in the Florida Avenue Project because Banneker Ventures would not give him sufficient control); Graham Dep. 131:4–6 (explaining that Metropolis withdrew due to a lack of confidence in Banneker Ventures).

[90] Doggett Interview Memo (describing conversations with Donatelli and Metropolis); *but see* Karim Dep. 65:18-67:9 (July 23, 2012) (stating Metropolis withdrew because one of its principals became ill).

[91] The Metro Board granted extensions on 4/23/2009 and 9/24/2009. Meeting Minutes, 1340th Meeting of the Board of Directors, WMATA (Apr. 23, 2009); Meeting Minutes, 1344th Meeting of the Board of Directors, WMATA (Sept. 24, 2009).

[92] Meeting Minutes, 1348th Meeting of the Board of Directors, WMATA (Jan. 28, 2010).

[93] *Id.*

[94] *Id.*

PDREC's March meeting, and, therefore, the Committee did not consider it.[95] On March 25, 2010, the Metro Board, after Executive Session, added the Florida Avenue Project to the agenda for that day's meeting.[96] After Board Members voiced concerns about the lack of a reliable development partner for Banneker Ventures, and Banneker Ventures's decision to lower the amount of its offer for the Florida Avenue Project,[97] Councilmember Graham moved to provide Metro joint development staff with additional time to negotiate the term sheet for the Florida Avenue Project.[98] Deputy Mayor Albert, cognizant that a majority of the Metro Board Members were planning to vote against extending the negotiation period, [99] countered Councilmember Graham's proposal with a motion to table the item, which the Metro Board Members unanimously approved.[100] Deputy Mayor Albert and Councilmember Graham coordinated these actions in advance during the Executive Session of the March 25, 2010, Metro Board Meeting.[101]

Banneker Ventures's exclusive negotiation period for the Florida Avenue Project expired on March 31, 2010. In July 2011, Metro sold the Florida Avenue Property to JBG Construction for $10.2 million.[102] The property remains undeveloped as of the date of this report.[103]

[95] E-mail from Loyda Sequeira, Board Secretary, WMATA, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, Steve Goldin, Director of Real Estate, WMATA, John B. Catoe, General Manager, WMATA, and Shiva K. Pant, Chief of Staff, Office of the General Manager, WMATA (Mar. 18, 2010, 7:05 p.m. EDT).

[96] Meeting Minutes, 1350th Meeting of the Board of Directors, WMATA (Mar. 25, 2010).

[97] Handwritten Notes from Meeting with Loyda Sequeira, Board Secretary, WMATA, author unknown (Apr. 2, 2010).

[98] Meeting Minutes, 1350th Meeting of the Board of Directors, WMATA (Mar. 25, 2010).

[99] Albert Interview Memo (stating that there were not enough votes to extend Banneker's negotiation period).

[100] Meeting Minutes, 1350th Meeting of the Board of Directors, WMATA (Mar. 25, 2010).

[101] Graham Dep. 157:4–160:13 (explaining that he and Deputy Mayor Albert agreed that Deputy Mayor Albert would make the motion to table the extension); Benjamin Interview Memo (stating that Councilmember Graham and Deputy Mayor Albert came to an agreement to stop negotiations with Banneker Ventures during executive session); *cf.* Albert Interview Memo (explaining that he moved to table the extension because there were not enough votes to grant Banneker Ventures another extension).

[102] Sarah Krouse, *JBG buys Metro's Florida Ave. sites for 10.2M*, Wash. Bus. J. (July 27, 2012), *available at* http://www.bizjournals.com/washington/news/2011/07/26/jbg-buys-metros-florida-ave-sites.html?page=all.

[103] As of the date of this report, JBG has not yet obtained necessary approval from D.C. Historic Preservation Review Board for its plan for the Florida Avenue Property. *See* Historic Preservation Review Board Staff Report and Recommendation (July 26, 2012), *available at* http://planning.dc.gov/DC/Planning/Historic+Preservation/About+HPO+&+HPRB/Who+We+Are

C. Councilmember Graham's Involvement in Metro's Negotiations with Banneker Ventures

Councilmember Graham's active involvement in the Florida Avenue Project prompted allegations from Banneker Ventures that Councilmember Graham's conduct contributed to the delays in the negotiations and paved the way for the Metro Board's decision to refuse to extend the negotiation period.[104] These allegations merited a closer examination of Councilmember Graham's activities related to the Florida Avenue Project.[105]

/Historic+Preservation+Review+Board/Monthly+Public+Notice/HPRB+July+2012/U+Street+HD+-+Florida+Avenue+at+9th+and+8th+Streets+NW+-+HPA+12-159.

[104] Letter from A. Scott Bolden, Partner, Reed Smith LLP, to Richard Sarles, Interim General Manager, WMATA, Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project (Apr. 27, 2010). Metro's Deputy General Counsel Bruce Heppen stated during his interview that, in response to the allegations in Attorney Bolden's letter, Councilmember Graham asked to be represented by Metro's in-house lawyers against the allegations. Mr. Heppen informed Councilmember Graham that Metro could not represent him under Metro's indemnification policy. Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Bruce Heppen Interview Memorandum (Aug. 13, 2012) ("Heppen Interview Memo"). In response to the phone call, Mr. Heppen wrote Councilmember Graham a letter stating that "the General Counsel and her staff will work closely with you in addressing your concerns raised by the letter from A. Scott Bolden. . . . I can assure you that your interests and the interests of the Authority will be addressed in the response." Letter from Bruce Heppen, Deputy General Counsel, WMATA, to Jim Graham, Councilmember, Washington, D.C. (Apr. 30, 2010); *but see* Graham Dep. 164:5–170:12 (stating that while he did not recall a conversation with Mr. Heppen it may have happened, that he did not recall receiving the letter where Mr. Heppen stated the General Counsel would work closely with Councilmember Graham to address his concerns, and denying involvement in the response by Metro's General Counsel to A. Scott Bolden). Metro's Audits and Investigations Committee directed Cadwalader to investigate the allegations as they pertained to Councilmember Graham and other Board Members. As discussed above, despite her letter to Banneker Ventures's attorney responding to concerns, the Metro General Counsel did not interview witnesses, review documents, or investigate the conduct of any Board Member. O'Keeffe Interview Memo (stating that she did not investigate possible misconduct by the Metro Board Members because she did not believe the actions of any Board Member affected Banneker Ventures's inability to negotiate an agreement).

[105] A recent report of the District of Columbia Office of the Inspector General found that Councilmember Graham had engaged in questionable conduct. *See* D.C. Office of the Inspector General, 2010-0492, Report of Investigation into the Office of the Chief Financial Officer's Lottery Contract Award (2012) ("During the course of W2I's meeting with a councilmember, who also chaired the board of a quasi-public entity, the councilmember indicated that he could not or was not inclined to go along with voting for or awarding the lottery contract to W2I because W2I's participating local partner had been awarded a contract with the quasi-public entity"). During the Inspector General's investigation, Mr. Williams and Ms. Williams of W2I separately met with investigators. Their prior statements to the D.C. Inspector General are consistent with the information Mr. and Ms. Williams provided to Cadwalader.

1. Councilmember Graham's Objections to Warren Williams and Banneker Ventures

Councilmember Graham's dislike and distrust of Mr. Williams (principal of Banneker Ventures) were well known to Metro staff and Board Members[106] and to Banneker Ventures.[107] In addition to Councilmember Graham's numerous statements questioning Mr. Williams and Banneker Ventures during Metro Board meetings,[108] Councilmember Graham contacted several individuals involved in the Florida Avenue Project directly to express his concerns. For example, Councilmember Graham expressed his low opinion of Mr. Williams to Mr. Malone (principal of Metropolis) when Metropolis announced that it was going to partner with Banneker Ventures on the Florida Avenue Project.[109] In fact, Councilmember Graham's objections, which ranged from Mr. Williams' reputation as a landlord to his alleged outstanding taxes,[110] were so severe that they prompted Ms. Doggett (Metro Senior Transit Oriented Development Specialist) to suggest to Mr. Karim (principal of Banneker Ventures) in April 2008 that Mr. Williams withdraw from the project.[111]

[106] Bottigheimer Interview Memo (recalling that Councilmember Graham expressed concerns about Mr. Williams's financial situation); *see also* Doggett Interview Memo (stating that Councilmember Graham raised concerns about Mr. Williams on multiple occasions, including at the April 24, 2008 Metro Board meeting); Moneme Interview Memo (explaining that Councilmember Graham expressed concerns about Mr. Williams at the April 24, 2008 Metro Board meeting).

[107] Karim Dep. 70:17-71:19 (July 23, 2012) (stating that he heard from Metro joint development staff that Councilmember Graham disliked Mr. Williams, and had claimed that Mr. Williams owed money to D.C.).

[108] Handwritten notes from Metro Board Executive Session, Rosalyn Doggett (Apr. 24, 2008); Moneme Interview Memo (explaining that Councilmember Graham expressed concerns about Mr. Williams at the April 24, 2008 Metro Board meeting).

[109] Malone Interview Memo (stating that Mr. Malone and Councilmember Graham had a conversation immediately after Councilmember Graham learned of the partnership. Councilmember Graham asked Mr. Malone why he would lend his support to a "joker" firm such as Banneker Ventures); *but cf*. Graham Dep. 132:13–21 (stating that he did not suggest to Metropolis not to do business with Banneker Ventures, and was relieved when Metropolis entered the Florida Avenue Project).

[110] Doggett Interview Memo (stating that Councilmember Graham criticized Mr. Williams's reputation as a landlord and said that he did not want to contract with individuals who failed to pay taxes). As discussed above, Ms. Doggett's additional inquiries uncovered no problems with Banneker Ventures and established that none of the Banneker Ventures principals owed any outstanding taxes to the District of Columbia.

[111] Doggett Interview Memo (explaining that after hearing Councilmember Graham's concerns, she probably spoke with Mr. Karim and told him that his firm probably would not be selected if Mr. Williams remained on the team); Handwritten Notes from Rosalyn Doggett (Apr. 15, 2008). *See also* Karim Dep. 70:20–71:22 (July 23, 2012) (stating that Ms. Doggett informed him that Councilmember Graham was concerned about Mr. Williams).

Councilmember Graham's only direct interaction with Mr. Williams related to the Florida Avenue Project occurred on May 29, 2008 at a meeting that Mr. Williams intended to be about the D.C. lottery. At this time, Mr. Williams and his wife, Alaka Williams, were trying to gain support from D.C. Councilmembers for W2I to be awarded the contract to administer the D.C. lottery.[112] W2I was a joint venture between Intralot, an international lottery vendor based in Greece, and W2Tech, a company founded by Mr. and Ms. Williams.[113] W2I had hired public relations executive Crystal Wright from the Baker Wright Group and lobbyist James Link from American Capitol Group to meet with Councilmembers and their staff to discuss W2I's bid.[114] After Mr. Link and Ms. Wright approached Councilmember Graham's staff about a meeting regarding the lottery, Councilmember Graham explicitly requested through his staff that Mr. Williams attend the meeting.[115]

[112] On January 24, 2008, the Office of the Chief Financial Officer for the District of Columbia awarded a contract to administer the D.C. lottery to W2I, subject to the approval of the D.C. Council. Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Alaka Williams Interview Memorandum (July 9, 2012) ("A. Williams Interview Memo") (explaining that the May 29 meeting was one of a series of meetings that W2I held with D.C. Councilmembers in efforts to lobby for votes on W2I's lottery bid); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Warren Williams Interview Memorandum (July 27, 2012) ("W. Williams Interview Memo") (stating that the May 29 meeting was one of a series of meetings that W2I held with D.C. Councilmembers in efforts to lobby for votes on their lottery bid); Deposition of Crystal Wright, Principal, Baker Wright Group (July 26, 2012) at 18:3–23:10 (stating that W2I hired her and Mr. Link to educate D.C. Councilmembers about the merits of W2I's proposal). On December 16, 2008 the D.C. Council denied a resolution to award W2I the lottery contract by a vote of five in favor of the resolution and eight against. Councilmember Graham voted against awarding W2I the contract. Contract No. CFOPD-07-C-053, with W2I Venture, LLC, On-line Gaming System and Related Services Approval Resolution of 2008, PR17-1160, Council of the District of Columbia (2008).

[113] W. Williams Interview Memo; *see also* A. Williams Interview Memo.

[114] Wright Dep. 10:10–11:20 (stating that she was hired by W2Tech and Intralot to handle public relations, and that she brought in Mr. Link to lobby the D.C. Council); *see also* Deposition of James Link, Partner, American Capitol Group (Aug. 2, 2012) at 9:8–10:3 (stating that Ms. Wright hired him to lobby for W2I).

[115] Link Dep. 10:13–11:14 (stating that Councilmember Graham's office had called his office to request Mr. and Ms. Williams attend the meeting); *see also* A. Williams Interview Memo (explaining that Mr. Link and Ms. Wright said that Councilmember Graham required Mr. Williams to be present at the meeting); W. Williams Interview Memo (stating that Mr. Link and Ms. Wright said that Councilmember Graham would not take the meeting unless Mr. Williams was present at the meeting); Wright Dep. 18:3–21:8 (stating that the morning of the meeting Mr. Link received a phone call insisting that Mr. and Ms. Williams attend the meeting); *but see* Graham Dep. 42:15–55:1 (explaining that either Mr. or Ms. Williams initiated the meeting, and the purpose of the meeting was to "clear the air" and see if the parties could build a more productive relationship).

October 11, 2012

On May 29, 2008, Mr. Link, Mr. Williams, Ms. Williams, and Ms. Wright met with Councilmember Graham and two of his staff members, Steven Hernandez and Calvin Woodland, in Councilmember Graham's office.[116] Mr. and Ms. Williams assumed that the topic of the meeting would be limited to W2I's bid to administer the lottery and had planned their remarks accordingly.[117] They did not plan to discuss the Florida Avenue Project with Councilmember Graham.[118] Moreover, Mr. Link and Ms. Wright's work with Mr and Mrs. Williams was limited to the lottery contract, not the Florida Avenue Project, and the sign-in sheet for the meeting from Councilmember Graham's office indicated the subject of the meeting was the lottery contract.[119] After exchanging pleasantries and before any discussion of the D.C. lottery could begin, Councilmember Graham consulted a file of information that he had in his office[120] and began to elaborate on his various complaints about Mr. Williams,[121] including issues revolving around Club U, a club that was owned by Mr. Williams that had lost its liquor license after a clubgoer was fatally stabbed,[122] and his lack of experience as a developer.[123] Councilmember Graham

[116] Graham Dep. 43:19–45:2 (stating that Ms. Williams, Mr. Williams, Ms. Wright, Mr. Link, Mr. Woodland and Mr. Hernandez attended the meeting); *see also* Meeting Sign-in Sheet for Lottery Contract Meeting at the Office of Councilmember Jim Graham (May 29, 2008).

[117] W. Williams Interview Memo (explaining that the purpose of the May 29, 2008 meeting was to discuss the lottery contract); A. Williams Interview Memo (stating the meeting's purpose was to discuss the W2I lottery bid, which needed the approval of the D.C. Council).

[118] *Id*.

[119] Link Dep. 72:2–7 (stating that he did not act as a lobbyist for Banneker Ventures or in connection with the Florida Avenue Project); Wright Dep. 10:10–21, 144:8–11 (stating that she was retained by W2Tech to handle public relations work and local lobbying, and that she did not have any clients involved with Metro); Meeting Sign-in Sheet for Lottery Contract Meeting at the Office of Councilmember Jim Graham (May 29, 2008).

[120] W. Williams Interview Memo (explaining that Councilmember Graham pulled a large file from his file cabinet and began to read from it); *see also* E-mail from Jim Graham, Councilmember, Washington, D.C. to Scott Butterworth, Washington Post (Feb. 16, 2012, 8:30 p.m. EST) (acknowledging that he [Councilmember Graham] had a "big fat file" regarding Mr. Williams's "irresponsible actions").

[121] Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Steve Hernandez Interview Memorandum (Aug. 1, 2012) ("Hernandez Interview Memo") (stating that almost immediately during the meeting, Councilmember Graham began complaining about Club U and a smear campaign involving posters); *see also* Link Dep. 16:7–19 (explaining that Councilmember Graham immediately made personal attacks against Mr. Williams); Wright Dep. 26:12–21, 35:22–37:5 (stating that Councilmember Graham spoke about Mr. Williams funding his enemies and Mr. Williams's involvement with a poster); A. Williams Interview Memo (stating that Councilmember Graham went on a tirade attacking Mr. Williams); W. Williams Interview Memo (explaining that Graham immediately started talking about his complaints with Mr. Williams).

also complained that Mr. Williams had participated in posting signs that depicted Councilmember Graham in a derogatory way.[124] After airing his personal grievances, Councilmember Graham told Mr. Williams that he had "won too much."[125] According to witnesses, Councilmember Graham next indicated that he would consider supporting W2I's bid for the lottery contract if Mr. Williams gave Councilmember Graham "something."[126]

[122] Tim Lemke, *D.C. Takes Liquor License from Club U*, Wash. Bus. J. (June 29, 2005), *available at* http://www.bizjournals.com/washington/stories/2005/06/27/daily28.html. On the night in question, a patron of the club was stabbed to death, a woman inside the club was knocked unconscious, and the emergency medical team transporting her to an ambulance was fired at over ten times by a gunman. *Why Club U Matters*, Wash. Post (Feb. 19, 2005) *available at* http://www.highbeam.com/doc/1P2-14154.html. Councilmember Graham had a prominent role in shutting down Club U. Eric Weiss, *Revoke Club U's Licence, D.C. Says*, Wash. Post (Apr. 14, 2005), *available at* http://www.washingtonpost.com/wp-dyn/articles/A51709-2005Apr13.html.

[123] A. Williams Interview Memo (explaining that Councilmember Graham attacked Banneker Ventures's legitimacy and expertise).

[124] Graham Dep. 49:18–51:4, 74:11–20 (stating that posters depicting Councilmember Graham in an offensive way were discussed at the meeting); Hernandez Interview Memo (stating that Councilmember Graham complained about the offensive posters); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Calvin Woodland Interview Memorandum (July 23, 2012) ("Woodland Interview Memo") (stating that the offensive posters were discussed at the meeting).

[125] Link Dep. 20:9–15 (explaining that Councilmember Graham said something to the effect that Mr. Williams had been winning too much); *see also* A. Williams Interview Memo (stating that Graham said that Mr. Williams had won too much); W. Williams Interview Memo (stating that Graham told Mr. Williams that he was winning too much). Councilmember Graham does not recall saying this. Graham Dep. 62:18–20:

> Q Did you say, Councilman Graham, to Warren Williams that you're winning too much?
>
> A No, I don't recall that.

[126] W. Williams Interview Memo (stating that Graham told Mr. Williams he had to "give me something"); *see also* A. Williams Interview Memo (stating that Councilmember Graham told Mr. Williams to "get off WMATA"); Link Dep. 20:9–22:2 (explaining that Councilmember Graham made a quid pro quo offer to Mr. Williams regarding the lottery contract and the Florida Avenue Project). Neither Councilmember Graham nor his staff recalled these statements. Hernandez Interview Memo (stating that he did not recall Councilmember Graham saying "you are winning too much" or "you have to give me something," but that he also could have "zoned out" during the meeting); Woodland Interview Memo (stating he did not recall Councilmember Graham saying "you are winning too much"); Graham Dep. 64:1–6, 65:14–20:

> Q Councilman Graham, did you make any statement whatsoever during that meeting that could have been interpreted or misinterpreted as a quid pro quo – if you give me something, I will give you something?
>
> A I don't recall.
>
> . . .

Q Why don't you think you recall one way or another whether you said that?

A Because I – my recollection of the meeting is entirely different than that, as I have expressed. And anything that would have been said along any of the lines that you're suggesting would have been said in passing.

However the testimonies of Mr. Link, Mr. Williams and Ms. Williams, as well as the contemporaneous documents discussed *infra* at notes 128-141, substantiate that Councilmember Graham stated that his support for the lottery contract was conditioned on Banneker Ventures withdrawing from the Florida Avenue Property.

Ms. Wright testified under oath that she did not recall Councilmember Graham making any such quid pro quo statement and that she was not concerned by anything said at the meeting. Wright Dep. 31:10–11, 32:3–33:18, 34:8–17:

Q Did Councilman Graham say something to the extent that Warren Williams had won too much?

. . .

A He would feel a lot better about the lottery contract if Warren wasn't involved in another deal or deals in the city, because he felt like because he was friends with Adrian Fenty, he was getting – his friendship was allowing him to maybe have access to deals that others wouldn't.

. . .

Q And did you interpret that, Ms. Wright, as Mr. Graham suggesting that Warren Williams pull out of another deal in order to get the lottery contract?

A You know, I don't remember. I don't really remember what – I would hate to try to speculate on what I thought about something 4-1/2 years ago. I didn't really have an opinion about it.

Q Well, as I understand, Ms. Wright, you'd expressed to other folks that you thought Mr. Graham's comment during that meeting was inappropriate.

A I really don't remember saying that.

Q Okay. Did you think his comment was inappropriate?

A I don't remember having an opinion on it at the time.

Q Do you have an opinion now? Was his comment inappropriate?

A I can't – I just remember thinking, gosh, I wish we could talk about the lottery. That's really what I remember thinking at the time.

Q Do . . . you believe his comment, though, was inappropriate?

A I don't have an opinion on whether it was inappropriate or appropriate.

. . .

Q Did you interpret Councilman Graham's statement about the other deals as being a quid pro quo? In other words, I'll support you for the lottery if you pull out of another development deal?

A No, I interpreted – or rather I took it, because I don't really have an interpretation, but I took it as him – what he literally said, that he was not happy – he felt, in his mind, that Warren Williams was getting deals because of his friendship with Adrian Fenty. That's how I took it.

Councilmember Graham then indicated what that "something" was by referring either to Metro generally or the Florida Avenue Property specifically.[127]

Mr. Link, Mr. Williams, Ms. Williams, and Ms. Wright were surprised by Councilmember Graham's suggestion that Banneker Ventures should withdraw from the Florida Avenue Project

Her testimony is contradicted by the testimony from other participants at the meeting discussed *supra*, and contemporaneous e-mails, *see*, *e.g.*, E-mail from Crystal Wright, Principal, Baker Wright Group, to Alaka Williams, Co-Owner, W2Tech, Warren Williams, Co-Owner, W2Tech, Jay Lapine, General Counsel, Intralot USA, Byron Boothe, VP Government Relations, Intralot USA, James Link, Partner, American Capitol Group, and A. Scott Bolden, Partner, Reed Smith LLP (June 2, 2008, 2:05 p.m. EDT) (writing "It is pretty clear [Councilmember Graham] wants us to come back with something."); E-mail from Crystal Wright, Principal, Baker Wright Group, to Alaka Williams, Co-Owner, W2Tech, Warren Williams, Co-Owner, W2Tech, Byron Boothe, VP Government Relations, Intralot USA, James Link, Partner, American Capitol Group, and A. Scott Bolden, Partner, Reed Smith LLP (June 8, 2008, 1:07 p.m. EDT) (writing that she spoke with a lawyer who advised "against putting anything in writing, acknowledging this meeting and its contents, as it would have far reaching implications, even though we did nothing wrong."); and the interview of Byron Boothe of Intralot, Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Byron Boothe Interview Memorandum (Aug. 23, 2012) ("Boothe Interview Memo") (stating that Ms. Wright told him shortly after the meeting that Councilmember Graham indicated that he would support the lottery if Mr. Williams withdrew from the Metro project); *but see* Wright Dep. 48:13–50:2 (stating that she did not make a call to Mr. Boothe after the meeting).

When presented with the above e-mails during her deposition Ms. Wright stated that she did not remember what they meant. Wright Dep. 66:13–19, 83:3–6:

> Q Could you please read the e-mail?
>
> A "Jim said that Graham e-mailed back thanking him also and say do you think they will do anything. It is pretty clear he wants us to come back with something."
>
> Q What does that mean?
>
> A I couldn't tell you. I don't remember.
>
> . . .
>
> Q You said that acknowledging this meeting would have far-reaching implications. What did you mean?
>
> A I actually have no idea what I meant.

[127] *See* Link Dep. 21:10–17 (explaining that he knew Councilmember Graham was referring to the Florida Avenue Project because Councilmember Graham said the word "WMATA"); *see also* A. Williams Interview Memo (stating that Councilmember Graham told Mr. Williams to "get off WMATA"); W. Williams Interview Memo (recalling that Councilmember Graham complained that Mr. Williams had the WMATA project and the lottery); Hernandez Interview Memo (recalling that, during the meeting, a project over a Metro station was discussed, but that he did not recall the context).

in order to obtain Councilmember Graham's support for W2I's bid for the lottery contract.[128] Mr. and Ms. Williams contacted their attorney, A. Scott Bolden of the law firm Reed Smith LLP, to explain the situation.[129] Ms. Wright, concerned about the ramifications of Councilmember Graham's request, also sought and obtained legal counsel.[130]

Contemporaneous internal communications confirm a clear concern with Councilmember Graham's request. On June 2, 2008, Mr. Williams sent an e-mail to Mr. Bolden, Mr. Link, Ms. Williams and Ms. Wright, in which he said, "I think being honest with Graham is the right move as well. We have begun some preliminary talks with LaKritz, the developer he wants to see win the site. If Graham wants to cut a deal with LaKritz for a 'better project' we could do that. But I just can't give the project to anyone."[131] Later that evening, after further discussions of ways in which Mr. Williams could comply with Councilmember Graham's request, Mr. Bolden sent an e-mail to Mr. Link, Mr. Williams, Ms. Williams, and Ms. Wright, in which he said, "this is complete bs and we are getting very close to corruption, bid rigging, and other inappropriate conduct and I am not going to be a part of it. perhaps the us atty should make the call on this by speaking with Mr. Graham about his request. Am I clear on this. To even consider it is placing each of us at risk. Period."[132]

After Mr. Bolden's e-mail made it clear that Mr. Williams should not entertain Councilmember Graham's request to withdraw from the Florida Avenue Project, the W2I team circulated multiple draft e-mails that tried to find a delicate way to inform Councilmember Graham that Banneker Ventures could not comply with his request to withdraw from the Florida Avenue Project. On June 7, 2008 at 8:51 p.m., for example, Mr. Bolden suggested that Mr. Link or Ms. Wright send Councilmember Graham an e-mail that stated, in part, that "[d]espite our legal and general concerns regarding your request that the Williams' withdraw from the WMATA

[128] Link Dep. 36:15–37:2 (explaining that the reactions of the W2I team were of surprise, shock and disgust after the meeting).

[129] A. Williams Interview Memo (stating that, within 48 hours of the May 29, 2008 meeting, she, Mr. Williams, Ms. Wright and Mr. Link met with Mr. Bolden).

[130] E-mail from Crystal Wright, Principal, Baker Wright Group, to Alaka Williams, Co-Owner, W2Tech, Warren Williams, Co-Owner, W2Tech, Byron Boothe, VP Government Relations, Intralot USA, James Link, Partner, American Capitol Group, and A. Scott Bolden, Partner, Reed Smith LLP (June 8, 2008, 1:07 p.m. EDT).

[131] E-mail from Warren Williams, Co-Owner, W2Tech, to A. Scott Bolden, Partner, Reed Smith LLP, Crystal Wright, Principal, Baker Wright Group, James Link, Partner, American Capitol Group, and Alaka Williams, Co-Owner, W2Tech (June 2, 2008, 7:05 p.m. EDT).

[132] E-mail from A. Scott Bolden, Partner, Reed Smith LLP, to Crystal Wright, Principal, Baker Wright Group, Warren Williams, Co-Owner, W2Tech, and Alaka Williams, Co-Owner W2Tech (June 2, 2008, 8:26 p.m. EDT). We offer no views concerning Mr. Bolden's statement.

development contract — contracts they won fair and square and other contract information, in exchange for your support of the lottery contract. . . ."[133]

E-mails between Councilmember Graham and Mr. Link (lobbyist for W2I) also reveal the general understanding among the meeting participants that Councilmember Graham wanted Banneker Ventures to withdraw from the Florida Avenue Project. On Friday, May 30, 2008, Mr. Link sent Councilmember Graham an e-mail thanking him for the meeting.[134] Councilmember Graham responded in an e-mail on Monday June 2: "Thanks. Do you think they will do anything."[135] Later that day, Mr. Link responded to Councilmember Graham's e-mail by

[133] E-mail from A. Scott Bolden, Partner, Reed Smith LLP, to Crystal Wright, Principal, Baker Wright Group, Warren Williams, Co-Owner, W2Tech, and Alaka Williams, Co-Owner, W2Tech (June 7, 2008, 8:51 p.m. EDT).

[134] E-mail from James Link, Partner, American Capitol Group, to Jim Graham, Councilmember, Washington, D.C. (May 30, 2008, 1:59 p.m. EDT).

[135] E-mail from Jim Graham, Councilmember, Washington, D.C., to James Link, Partner, American Capitol Group (June 2, 2008, 8:12 a.m. EDT). Councilmember Graham initially did not recall what the e-mail meant. Graham Dep. 80:12–81:9:

> Q What did you mean when you said, "do you think they will do anything"?
>
> A I really don't know. I really don't know what that refers to. That's the e-mail that Jo-Ann Armao showed me.
>
> Q You have no recollection on what you meant there?
>
> A No, I don't.
>
> Q Do anything with respect to what?
>
> A I don't know. I don't know what that is referring to.
>
> . . .
>
> Q Could it have been WMATA?
>
> A I don't know.

Councilmember Graham later stated during the deposition that he thought the statement could have been referring to whether Mr. Williams was looking into the allegations Councilmember Graham made at the May 29, 2008 meeting about the offensive posters. Graham Dep. 84:11–85:5:

> Q Okay. He says, "I know you're out of town, but hopefully you are checking e-mail." First paragraph he says, "we looked into the questions you asked." Do you understand what he means by question you asked?
>
> A I think this could very well be the follow-up. This could very well be the follow-up that he's talking about, what next steps. And now that you show me this e-mail and refresh my memory, this could be the follow-up here, is that he had promised to look into this to determine whether or not, in fact, the allegation – the thoughts that were in my mind were true. And here he's giving me the information that he found. Because Jim Link had no

writing, "Yes, wheels are in motion. Everyone took your concerns seriously. . . ."[136] The next day, Councilmember Graham, apparently referring to the fact that the Metro PDREC vote to select Banneker Ventures to develop the Florida Avenue Project had been delayed at Councilmember Graham's request until June 26, responded, "I will be gone from the 6th to the 16th,....but [sic] I am sure nothing will happen during that time."[137]

On June 11, 2008, Mr. Link continued the e-mail chain from May 30, 2008 by sending Councilmember Graham an e-mail refuting the allegations that Mr. Williams was involved in the derogatory posters.[138] Mr. Link went on to write that, "as for Metro, there are a number of

involvement whatsoever with these earlier events. So this is probably what's being referred to as the next steps and the follow-up.

[136] E-mail from James Link, Partner, American Capitol Group, to Jim Graham, Councilmember, Washington, D.C. (June 2, 2008, 2:56 p.m. EDT). During his deposition Councilmember Graham did not know what Mr. Link meant. Graham Dep. 81:19–82:3:

Q What did you understand him to be meaning when he wrote to you in response to your inquiry of "do you think they will do anything" that "wheels are in motion"?

A I don't know.

Q Wheels for what?

A I don't know.

[137] E-mail from Jim Graham, Councilmember, Washington, D.C., to James Link, Partner, American Capitol Group (June 3, 2008, 7:54 a.m. EDT). Councilmember Graham did not recall what was scheduled between those dates. Graham Dep. 82:7–83:4:

Q You say, "I will be gone from the 6th to the 16th, but I am sure nothing will happen during that time."

A Hmm. I have no idea what that –

. . .

Q Could you be referring to something that dealt with WMATA there?

A I don't know.

Q And where were you the 6th to the 16th?

A It could have been referring to the lottery contract, though.

Q Okay. What –

A I don't know, but I can check that.

Q How would you check that?

A I don't know. I could check my calendar for that date to see where I was.

[138] E-mail from James Link, Partner, American Capitol Group, to Jim Graham, Councilmember, Washington, D.C. (June 11, 2008, 12:31 p.m. EDT).

factors that make it impossible for us to even consider accommodating your request."[139] Mr. Link concluded by informing Councilmember Graham that Ms. Wright (public relations consultant for W2I) had been contacted by a reporter from the *Washington Examiner* and asked questions about the May 29, 2008 meeting.[140] Mr. Link assured Councilmember Graham that no one from W2I had discussed the meeting with the press because "it would not be in our interest or your interest to publicize what was discussed."[141] Later that day, Councilmember Graham responded to Mr. Link's e-mail, writing that "the rejection of your application at Metro (which has not been approved) is necessitated not by any of this but by other factors relating to the

[139] *Id*. The decision to reject Councilmember Graham's request occurred after Mr. Bolden's internal e-mail telling the W2I team that "[t]o even consider it is placing each of us at risk." E-mail from A. Scott Bolden, Partner, Reed Smith LLP, to Crystal Wright, Principal, Baker Wright Group, Warren Williams, Co-Owner, W2Tech, and Alaka Williams, Co-Owner W2Tech (June 2, 2008, 8:26 p.m. EDT). Councilmember Graham initially did not recall what this statement by Mr. Link meant. Graham Dep. 90:10–19, 91:18–92:3:

> Q And if you flip the page to the end of his e-mail, he says, "as for Metro, there are a number of factors that make it impossible for us to even consider accommodating your request."
>
> A Uh-huh.
>
> Q What did you understand Mr. Link to mean when he wrote that?
>
> A I don't know what he meant by that. I do know that in my subsequent e-mail, I have a response to it.
>
> . . .
>
> Q Okay. Mr. Graham, why would Mr. Link raise this point, "as for Metro, there are a number of factors that make it impossible for us to even consider accommodating your request"?
>
> A Maybe this is a misinterpretation of something that was said at the prior meeting.
>
> Q Maybe something related to Metro?
>
> A Maybe.

Councilmember Graham later thought he was referring to Banneker Ventures's qualifications. Graham Dep. 98:19–20.

[140] E-mail from James Link, Partner, American Capitol Group, to Jim Graham, Councilmember, Washington, D.C. (June 11, 2008, 12:31 p.m. EDT).

[141] *Id.*

application."[142] Councilmember Graham also wrote that he would "rather not continue this on email."[143]

The June 11, 2008 e-mail exchange was the last communication between Councilmember Graham and Mr. Link, Ms. Wright, Mr. Williams or Ms. Williams concerning the Florida Avenue Project.[144] Although Councilmember Graham's exact statements at the May 29, 2008 meeting are unclear, as discussed in Section VII(D)(1) of this report, it appears that Councilmember Graham suggested or, at the very least, implied that he would consider supporting W2I's bid for the lottery before the D.C. Council only if Banneker Ventures withdrew from the Florida Avenue Project. Indeed, Councilmember Graham has not outright denied making the statement, instead positing that he may have said something in passing that was misinterpreted by the participants of the May 29, 2008 meeting.[145]

2. Councilmember Graham's Support of LaKritz Adler

Councilmember Graham's support for LaKritz Adler, a real estate development firm, was well known to all parties involved in the Florida Avenue Project, including the principals of Banneker Ventures,[146] the principal of Donatelli Development,[147] Ms. Doggett (Metro Senior Transit

[142] E-mail from Jim Graham, Councilmember, Washington, D.C., to James Link, Partner, American Capitol Group (June 11, 2008, 2:26 p.m. EDT). Councilmember Graham speculated that his statement might have been related to Banneker Ventures's qualifications. Graham Dep. 97:13–105:22 (explaining that the statement related to the qualifications of Banneker Ventures, and that anything said about Metro was said in passing or was misinterpreted).

[143] E-mail from Jim Graham, Councilmember, Washington, D.C., to James Link, Partner, American Capitol Group (June 11, 2008, 2:26 p.m. EDT); *but see* Graham Dep. 95:20–96:5 (explaining that he did not want to continue by e-mail because writing an answer would take too much time).

[144] Following the May 29, 2008 meeting, the Metro Board selected Banneker Ventures as the developer of the Florida Avenue Project and negotiated with Banneker Ventures concerning the terms for twenty months. As discussed above in Section VI.B.3, during this time period Banneker Ventures substantially lowered its offer, and its three development partners withdrew from the project.

[145] Graham Dep. 65:2–66:22, 69:19–22 (explaining that anything said about Metro was said in passing or was misinterpreted).

[146] Karim Dep. 33:10–13, 36:6–9 (July 23, 2012):

> Q What did you discuss over lunch with Mr. Graham?
>
> A So he – he strongly recommended that we add LaKritz Adler to our development team.
>
> . . .
>
> Q Why would it have been in your interest to get involved with LaKritz?
>
> A Because the guy that's controlling our deal suggested that we do it. Jim Graham, that is.

Oriented Development Specialist),[148] Mr. Bottigheimer (Metro Assistant General Manager for Planning and Joint Development),[149] Deputy Mayor Albert,[150] and Mr. Moneme (Metro Board Member).[151]

Councilmember Graham met with Mr. Karim (principal of Banneker Ventures) at a restaurant before the June 26, 2008 meeting in which the Metro Board selected Banneker Ventures to develop the Florida Avenue Project.[152] At the restaurant, Councilmember Graham encouraged Mr. Karim to add LaKritz Adler, one of the finalists for the Florida Avenue Project, to Banneker Ventures's development team despite the fact that Banneker Ventures already had a development partner.[153] Councilmember Graham did not deny that this meeting took place.[154] He recalled that he may have suggested that Banneker Ventures add LaKritz Adler to the development team when Banneker Ventures's former development partner withdrew from the project.[155]

see also E-mail from Warren Williams, Principal, Banneker Ventures, to A. Scott Bolden, Partner, Reed Smith LLP, Jim Link, Partner, American Capitol Group, and Crystal Wright, Principal, Baker Wright Group (June 2, 2008, 7:05 p.m. EDT).

[147] Donatelli Interview Memo (stating that at a meeting where the bidders on the Florida Avenue property presented their proposals to the community Councilmember Graham expressed to Donatelli that he preferred the LaKritz Adler proposal because it included development on an adjacent property).

[148] Doggett Interview Memo (recalling that Councilmember Graham expressed support for LaKritz Adler at a meeting).

[149] Bottigheimer Interview Memo (explaining that Ms. Doggett told him that Councilmember Graham favored LaKritz Adler).

[150] Albert Interview Memo (explaining that Deputy Mayor Albert heard that Councilmember Graham favored LaKritz Adler or Donatelli Development).

[151] Moneme Interview Memo (stating that LaKritz Adler was understood to be Councilmember Graham's favorite developer).

[152] Karim Dep. 33:18–34:5 (July 23, 2012) (stating that the meeting occurred between April and June 2008).

[153] Graham Dep. 126:7–17 (stating that he may have asked Mr. Karim to consider LaKritz Adler as a development partner after Metropolis withdrew); Karim Dep. 33:12-22 (stating that Councilmember Graham "strongly encouraged" Mr. Karim to add LaKritz Adler to the development team).

[154] Graham Dep. 124:8–125:4 (stating he recalled the meeting with Mr. Karim at the restaurant, but was unsure of the date of the meeting)

[155] Graham Dep. 126:7–17 (stating that he may have asked Mr. Karim to consider LaKritz Adler as a development partner after Metropolis withdrew).

At Councilmember Graham's suggestion, Banneker Ventures and LaKritz Adler explored a potential partnership in the summer of 2008.[156] After a few months, it became clear that Banneker Ventures and LaKritz Adler could not agree on the terms of any partnership.[157] In the fall of 2008, Banneker Ventures and LaKritz Adler ceased their discussions of working together on the Florida Avenue Project.[158]

Both during and after the discussions with Banneker Ventures, LaKritz Adler's principals called Ms. Doggett (Metro Senior Transit Oriented Development Specialist) every few months to discuss the Florida Avenue Project.[159] On February 3, 2009, for example, Joshua Adler, one of the principals at LaKritz Adler, called Ms. Doggett and, according to Ms. Doggett, told her that Councilmember Graham had asked him to "make a deal" with Banneker Ventures.[160] According to Ms. Doggett and her contemporaneous notes, during these discussions the principals of LaKritz Adler usually took the opportunity to promote their proposal for the Florida Avenue Property and provide negative information about Banneker Ventures.[161]

[156] Karim Dep. 33:10–39:18 (July 23, 2012) (stating that he contacted LaKritz Adler in 2008 after meeting with Councilmember Graham); Adler Interview Memo (stating that he and Mr. Karim had a meeting in July 2008); *see also* Handwritten Notes from Rosalyn Doggett (Feb. 3, 2009); *but see* Graham Dep. 126:7–17 (stating that he may have asked Mr. Karim to consider LaKritz Adler as a development partner after Metropolis withdrew). Banneker Ventures and LaKritz Adler's potential partnership involved an option to purchase a parcel of land adjacent to the Florida Avenue Property. The agreement to purchase the property was not consummated. Karim Dep. 76:19–81:7 (July 23, 2012) (stating that negotiations began in June 2008 for Banneker Ventures to add LaKritz Adler as a development partner or buy their adjacent parcel).

[157] Karim Dep. 87:15–89:2 (July 23, 2012) (explaining that negotiations continued until at least August 2008, and ceased because Banneker Ventures thought the price of the adjacent parcel was too high); Adler Interview Memo (stating that LaKritz Adler immediately rejected the idea of becoming a development partner with Banneker Ventures, and that Banneker Ventures eventually lost interest in the purchase of the adjacent parcel); Handwritten Notes from Rosalyn Doggett (Feb. 3, 2009).

[158] *Id.*

[159] Doggett Interview Memo (stating that Mr. Adler called every few months to discuss the Florida Avenue Project); *see also* Handwritten Notes from Rosalyn Doggett (Feb. 3, 2009). Mr. Adler indicated that he would call Ms. Doggett every six months between the time period in which Banneker Ventures was selected as the joint developer (March 2008) and the point when the negotiation period expired (March 2010). Adler Interview Memo.

[160] Handwritten Notes from Rosalyn Doggett (Feb 3, 2009). Mr. Adler did not recall making this statement to Ms. Doggett. Adler Interview Memo. In internal LaKritz Adler communications Councilmember Graham was referred to as "our friend." E-mail from Joshua Adler, Principal, LaKritz Adler, to Robert LaKritz, Principal, LaKritz Adler (Aug. 5, 2008, 1:55 p.m. EDT).

[161] Doggett Interview Memo (explaining that Mr. Adler would often speak highly of his team and negatively about other developers); *see also* Handwritten Notes from Rosalyn Doggett (Feb 3, 2009). Mr.

D. No Evidence of Motivation Based upon Pecuniary Interests

Although the scope and duration of our investigation was limited and we lacked certain tools commonly used by law enforcement to trace the flow of money, we are not aware of any facts to suggest that the conduct of any Metro Board member or Metro employee was motivated by a pecuniary interest. We are not aware of evidence that any payments were offered to, or accepted by, any Metro Board member or Metro employee. Similarly, we are not aware of evidence that any Metro Board member or Metro employee had a financial interest in the Florida Avenue Project or in any of the developers involved in the joint development process.

VII. INVESTIGATIVE FINDINGS AND CONCLUSIONS

A. Metro's Selection Process Did Not Address Key Operational and Policy Issues before Metro Joint Development Staff Presented the Proposal to Select Banneker Ventures to the Metro Board

Many of the difficulties that Metro and Banneker Ventures encountered during the negotiation period could have been avoided if Metro had adopted policies or guidelines on issues relating to joint development projects, such as affordable housing and acceptable lease arrangements. Metro's lack of clear statements on these crucial issues delayed the negotiation process by creating difficulties for the inexperienced Banneker Ventures team and the Metro employees.

Although the Metro Board had considered affordable housing to be an essential component of joint development projects,[162] the Metro Board decided against adopting the affordable housing requirements set forth in the DUKE Plan, a policy adopted by the Council for the District of Columbia in 2005 that addressed affordable housing in the Shaw/U Street area.[163] The Metro Board also did not adopt any other policy that would have provided Metro joint development staff and potential development partners with specific requirements, guidelines or goals for

Adler did not recall expressing any views about Banneker Ventures to Ms. Doggett. Adler Interview Memo.

[162] Albert Interview Memo (stating that the Deputy Mayor's office had a goal of 35% affordable housing in each project); Zimmerman Interview Memo (stating that he supported affordable housing); Graham Dep. 180:16–181:2 (stating that affordable housing strengthens the development and is an important public policy issue); Doggett Interview Memo (stating that some Board Members displayed a great interest in affordable housing).

[163] Doggett Interview Memo (stating that, although the DUKE plan had been implemented by D.C., she was confused about how to apply it to Metro).

affordable housing.[164] The lack of a clear policy allowed Councilmember Graham to argue that, consistent with other developments in the area, twenty percent of the units in the Florida Avenue Project should be rented as affordable housing.[165] Mr. Karim (principal of Banneker Ventures) counter-argued that such a requirement would decrease the value of the Florida Avenue Project.[166] With both parties taking opposite, albeit arguably reasonable positions, Ms. Doggett (Metro Senior Transit Oriented Development Specialist) and her team were left to resolve the dispute without any criteria or policy statements to guide them, leading to delays in the negotiations.[167]

Metro's lack of clarity about acceptable leasing arrangements also stalled the negotiations. Mr. Karim notified Metro joint development staff in October 2008 that Banneker Ventures wanted to include a lot adjacent to the Florida Avenue Property in the development.[168] Joshua Montague (Metro Assistant General Counsel) told Mr. Karim that he could not include the adjacent property because the lot was not part of the original term sheet and the proposed lease arrangement was not feasible for Metro.[169] Over the next year, however, Mr. Bottigheimer (Metro Assistant General Manager for Planning and Joint Development), Ms. Doggett (Metro Senior Transit Oriented Development Specialist), Mr. Karim (principal of Banneker Ventures), Councilmember Graham, and Deputy Mayor Albert continued to discuss ways that Banneker Ventures could include the adjacent lot in the Florida Avenue Project. For example, they discussed changing the term sheet so that the Florida Avenue Project became a property sale instead of a lease arrangement.[170] In November 2009, after hours of negotiations, Banneker Ventures finally realized that it would be impossible for Metro to proceed with a sale or accept a lease arrangement that included the adjacent lot.[171]

[164] Draft Memorandum regarding Material Change to Approved Term Sheet, unknown author, undated; *see also* Bottigheimer Interview Memo (stating that the Metro Board did not adopt the policy proposal he presented to the Metro Board addressing affordable housing).

[165] Handwritten Notes from Joshua Montague (Sept. 26, 2008).

[166] Karim Dep. 20:15–21:22 (July 23, 2012) (stating that Banneker Ventures ran projections on the affordable housing requirement and reduced its offer based on that impact).

[167] Doggett Interview Memo (explaining that Metro joint development staff were uncertain about how to incorporate affordable housing into the project); Bottigheimer Interview Memo (stating that there was no binding joint development agreement in place at the time Banneker Ventures's term sheet was tabled in March 2010).

[168] Memorandum from Joshua Montague, Assistant General Counsel, WMATA, to Carol B. O'Keeffe, General Counsel, WMATA, and Bruce P. Heppen, Deputy General Counsel, WMATA (Oct. 21, 2009).

[169] *Id.*

[170] *Id.*

[171] E-mail from Omar Karim, Partner, Banneker Ventures, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA (Nov. 3, 2009, 1:58 p.m. EST).

To date, the Metro Board has not addressed the problems that caused the fatal delays in the Florida Avenue Project negotiations. The Metro Board rejected the affordable housing policy drafted by Mr. Bottigheimer in the wake of the negotiations for the Florida Avenue Project,[172] and did not include an affordable housing requirement in Metro's Joint Development Guidelines.[173] These shortcomings appear to continue to trouble and delay Metro's current developments to the point that experienced developers hesitate to bid on Metro projects.[174]

B. The Lack of a Clearly Defined Role for Metro Board Members Allowed Certain Board Members to Become Involved in Negotiating with Banneker Ventures

During the time the Metro Board considered the Florida Avenue Project, the Metro Board lacked a clear policy on the appropriate level of involvement for individual Board Members in joint development projects. Although two documents addressed the proper role for the Metro Board and its Members, neither document sufficiently clarified the limits within which an individual Board Member must stay when the Metro Board was weighing a proposal such as the Florida Avenue Project. The first document, the Joint Development Policies and Guidelines ("Joint Development Policies"), stated that the Metro Board was responsible for approving the selection of a developer, and the Metro staff had authority to negotiate with the selected developer before the Metro Board approves the final contract.[175] The second document, the Procedures for the Metro Board of Directors ("Metro Procedures"), focused on how Board Members should perform their duties on the Metro Board.[176] According to the Metro Procedures, the Metro Board should determine policy and oversee Metro operations.[177] The Metro Board should act collectively,[178] and "No member individually shall direct or supervise . . . any [Metro] employee

[172] Bottigheimer Interview Memo (stating that the Metro Board did not adopt the policy proposal he presented to the Board addressing affordable housing).

[173] Joint Development Policies and Guidelines, WMATA (Nov. 20, 2008), *available at* http://www.wmata.com/pdfs/business/Guidelines%20Revision11-20-08.pdf.

[174] Bottigheimer Interview Memo (explaining that Metro's joint development program was difficult for developers and that many experienced developers refused to work with Metro because the process was too complicated); O'Keeffe Interview Memo (explaining that the development community did not like working with Metro); *see also* Malone Interview Memo (stating that developers who worked with Metro usually had bad experiences); Donatelli Interview Memo (stating that the lengthy joint development process led to Metro missing opportunities to engage in development).

[175] Joint Development Policies and Guidelines, WMATA (July 21, 2005).

[176] Procedures of the Washington Metropolitan Area Transit Authority Board of Directors, Article I, adopted Feb. 16, 2006.

[177] *Id.*

[178] *Id.*

or contractor."[179] As applied to the Joint Development Policies, the Metro Procedures discouraged, but did not clearly prohibit, individual involvement in joint development projects by Board Members. Specifically, although the Metro Procedures stated that individual Board Members shall not direct or supervise Metro employees or contractors, the Metro Procedures did not prohibit individual Board Members from meeting or consulting with Metro staff or developers.[180] Because the Metro Procedures did not provide Metro Board Members with any direction on the appropriate amount of individual contact with Metro staff and developers, Metro Board Members lacked sufficient guidance for their involvement in the Florida Avenue Project.

Without this guidance, Metro Board Members displayed disparate understandings of the appropriate role of Board Members in joint development projects. The Maryland, Virginia and federal government Board Members believed the proper scope of their actions on the Florida Avenue Project needed to be confined to Board Meetings;[181] they did not think it was appropriate to contact the selected developer.[182] Other Metro Board Members, specifically those representing the District of Columbia had a different view. Both Mr. Moneme and Deputy Mayor Albert stated they were responsible for furthering Mayor Fenty's interests in promoting development.[183] Deputy Mayor Albert also acknowledged that his development team in the Mayor's office met with Banneker Ventures and he likely also attended some of those

[179] *Id.*

[180] *Id.*

[181] Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Marcel Acosta Interview Memorandum (Aug. 31, 2012) ("Acosta Interview Memo") (stating the Metro Board should act as a collective body); Benjamin Interview Memo (stating he did not contact the Metro joint development staff or the selected developer during the Florida Avenue Project); Downey Interview Memo (stating that he did not contact Metro staff or developers); Hewlett Interview Memo (stating she only asked questions during Board Meetings, and did not contact the Metro joint development staff or the selected developer during the Florida Avenue Project); Hudgins Interview Memo (stating that she let the Metro staff implement the Metro Board's policy, and that she never contacted the Metro staff or developers directly); Linton Interview Memo (stating that he did not individually contact developers or Metro staff); Zimmerman Interview Memo (stating that he did not think it was appropriate to contact developers).

[182] Acosta Interview Memo (stating that he did not interact individually with developers in his capacity as a WMATA Board Member); Benjamin Interview Memo (stating he did not ever contact developers); Downey Interview Memo (stating that he did not contact developers and thought it was inappropriate to do so); Hewlett Interview Memo (stating that she did not contact developers); Hudgins Interview Memo (stating she never contacted developers in Virginia about Metro projects); Linton Interview Memo (stating that he will not speak with developers who pursue Metro contracts); Zimmerman Interview Memo (stating that he did not think it was appropriate to contact developers).

[183] Moneme Interview Memo (stating that his role as a Metro Board Member was to represent the Fenty administration on financial and political topics impacting D.C.); *see also* Albert Interview Memo (explaining that Mayor Fenty's Administration wanted the Florida Avenue Property to be developed).

meetings.[184] Similarly, Councilmember Graham stated that he was involved extensively in development projects that affected his district, Ward 1.[185] Metro's General Counsel, Carol O'Keeffe, supported the D.C. Board Members' views that their involvement in development projects extended beyond the Metro boardroom.[186] In a letter to A. Scott Bolden, Attorney for Banneker Ventures, she stated: "Board Members frequently discuss the progress of joint development negotiations with the parties involved. The nature of these discussions is dynamic and may include ways to strengthen the development team, but these discussions do not bind the [Metro] Board of Directors."[187]

The lack of clear limits on Metro Board Member interactions with developers and Metro staff, combined with Ms. O'Keeffe's apparent support of Board Members' discussions with developers, resulted in Councilmember Graham and Deputy Mayor Albert engaging in direct communications with the developer for the Florida Avenue Project and Metro joint development staff outside of the Metro boardroom. Ultimately, the involvement of Councilmember Graham and Deputy Mayor Albert in the detailed negotiations of the Florida Avenue Project – largely without the knowledge of the other Board Members – may have contributed to an appearance of political pressure being inserted into Metro Board decision making.

Councilmember Graham met directly with principals of Banneker Ventures on several occasions to discuss the Florida Avenue Project.[188] He and his D.C. Council staff negotiated directly with

[184] Albert Interview Memo (stating he met with Banneker Ventures after they became selected developer, and that he believed his team in the Mayor's office met with Banneker Ventures before they were selected and that he may have attended those meetings); *see also* Meeting Confirmation from Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C., to Omar Karim, Partner, Banneker Ventures, and Yohance Fuller, Program Manager, Office of the City Administrator, District of Columbia, Re: WMATA (Aug. 31, 2009).

[185] Graham Dep. 16:1–5:

> A So my involvement in this predated by a number of years, you know, the actual solicitation. The site is located in Ward 1. I had previously been extensively involved in other joint development sites which were located in Ward 1.

[186] O'Keeffe Interview Memo (stating that she thought Board Members might have regular contact with developers in their jurisdictional roles).

[187] Letter from Carol O'Keeffe, General Counsel, WMATA, to A. Scott Bolden, Partner, Reed Smith LLP, Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project (May 28, 2010). Councilmember Graham cited the quoted passage in his testimony to Cadwalader. Graham Dep. 37:6–21.

[188] Graham Dep. 179:2–180:5 (stating that he met with Mr. Karim at his D.C. Council office and again at a restaurant to discuss the Florida Avenue Project).

Banneker Ventures over specific terms, such as different possibilities for lease arrangements.[189] When the Metro joint development staff was considering a sale of the Florida Avenue Property to Banneker Ventures, Councilmember Graham intervened to convey his dissatisfaction with the idea of a sale directly to Mr. Bottigheimer (Metro Assistant General Manager for Planning and Joint Development), John Catoe (Metro General Manager), Ms. Doggett (Metro Senior Transit Oriented Development Specialist) and Ms. O'Keeffe (Metro General Counsel).[190]

Similarly, Deputy Mayor Albert had direct dealings with Banneker Ventures and Metro staff concerning the Florida Avenue Project. He individually met with Banneker Ventures prior to joining the Metro Board,[191] and members of his staff in the Deputy Mayor's office negotiated directly with Banneker Ventures over specific terms even while Deputy Mayor Albert served on the Metro Board.[192] In addition to meetings, Deputy Mayor Albert communicated over e-mail

[189] E-mail from Jonathon Kass, Committee on Public Works and Transportation, Council of the District of Columbia, to Maurice Perry, Vice President, Banc of America CDC, Omar Karim, Partner, Banneker Ventures, Yohance Fuller, Program Manager, Office of the City Administrator, District of Columbia, Joshua Montague, Assistant General Counsel, WMATA, John Hagner, Attorney at Law, Womble Carlyle Sandridge & Rice, LLP, Marshall Malcolm, Head, Appraisal Branch, WMATA, Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, and Steven Goldin, Director of Real Estate, WMATA (Oct. 22, 2009, 4:06 p.m. EST); *see also* E-mail from Jonathon Kass, Committee on Public Works and Transportation, Council of the District of Columbia, to Omar Karim, Partner, Banneker Ventures, Yohance Fuller, Office of the City Administrator, District of Columbia, Steven Goldin, Director of Real Estate, WMATA, and Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA (Nov. 4, 2009, 11:27 a.m. EST).

[190] E-mail from Jim Graham, Councilmember, Washington, D.C., to Carol O'Keeffe, General Counsel, WMATA, Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C., Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, and John Catoe, Jr., General Manager, WMATA (Oct. 20, 2009, 5:44 p.m. EST).

[191] Albert Interview Memo (explaining that he met with Banneker Ventures in his capacity as Deputy Mayor before becoming a Metro Board Member); *see also* Meeting Confirmation from Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C., to Omar Karim, Partner, Banneker Ventures, and Yohance Fuller, Program Manager, Office of the City Administrator, District of Columbia, Re: WMATA (Aug. 31, 2009).

[192] E-mail from Jonathon Kass, Committee on Public Works and Transportation, Council of the District of Columbia, to Maurice Perry, Vice President, Banc of America CDC, Omar Karim, Partner, Banneker Ventures, Yohance Fuller, Program Manager, Office of the City Administrator, District of Columbia, Joshua Montague, Assistant General Counsel, WMATA, John Hagner, Attorney at Law, Womble Carlyle Sandridge & Rice, LLP, Marshall Malcolm, Head, Appraisal Branch, WMATA, Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, and Steven Goldin, Director of Real Estate, WMATA (Oct. 22, 2009, 4:06 p.m. EST); *see also* E-mail from Jonathon Kass, Committee on Public Works and Transportation, Council of the District of Columbia, to Omar Karim, Partner, Banneker Ventures, Yohance Fuller, Office of the City Administrator, District of Columbia, Steven Goldin, Director of Real Estate, WMATA, and Nathaniel Bottigheimer, Assistant General Manager for Planning

with Mr. Karim of Banneker Ventures about the Florida Avenue Project while the Deputy Mayor served on the Metro Board,[193] and Mr. Karim even sent talking points about deal terms for the Florida Avenue Project to Deputy Mayor Albert to use at a Metro Board meeting.[194]

Because the Joint Development Policies and Metro Procedures that defined appropriate interactions with Metro Board Members were unclear, Metro staff members were uncertain how to respond to Board Members who contacted them directly. Of the Metro staff interviewed during the investigation, Ms. Doggett (Metro Senior Transit Oriented Development Specialist), Mr. Bottigheimer (Metro Assistant General Manager for Planning and Joint Development), and Mr. Montague (Metro Assistant General Counsel) were unaware that the Metro Procedures expressly prohibited Board Members from directing or supervising Metro staff.[195] Ms. Doggett and Mr. Bottigheimer thus felt compelled to try to accommodate all Board Member requests, such as Councilmember Graham's request that Ms. Doggett conduct additional due diligence on Banneker Ventures.[196] Without a clear policy to guide their interactions with the Metro Board, Metro's ambiguous Joint Development Policies and uncommunicated Metro Procedures left Mr.

and Joint Development, WMATA (Nov. 4, 2009, 11:27 a.m. EST). In his interview with Cadwalader, Mr. Adler of LaKritz Adler stated that at one point Councilmember Graham told him he had never seen a public official "go to the mat" for someone to win a bid like the Deputy Mayor's Office of Economic Development. Adler Interview Memo.

[193] Meeting Confirmation from Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C., to Omar Karim, Partner, Banneker Ventures, and Yohance Fuller, Program Manager, Office of the City Administrator, District of Columbia, Re: WMATA (Aug. 31, 2009); E-mail from Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C., to Omar Karim, Partner, Banneker Ventures (June 27, 2009, 9:21 p.m. EDT); E-mail from Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C., to Omar Karim, Partner, Banneker Ventures (July 19, 2009, 8:42 p.m. EDT).

[194] E-mail from Omar Karim, Partner, Banneker Ventures, to Neil Albert, Deputy Mayor for Economic Development, Office of the Mayor of Washington, D.C. (Dec. 4, 2008, 7:55 a.m. EST). Deputy Mayor Albert did not respond to Mr. Karim's e-mail, and it is unclear whether he used those talking points during any meetings of the Metro Board. Nonetheless, the fact that Mr. Karim felt comfortable in sending those talking points to Deputy Mayor Albert supports the notion that the two had direct interactions and that Mr. Karim believed through those interactions that he could count on Deputy Mayor Albert's support during Metro Board meetings.

[195] Bottigheimer Interview Memo (explaining that Metro's culture dictated that when a Board Member asked for information, a staff member would provide it); Doggett Interview Memo (stating that Board Members frequently contacted lower level Metro staff); Memorandum from Cadwalader, Wickersham & Taft LLP to Investigation File, Re: Joshua Montague Interview Memorandum (July 6, 2012) ("Montague Interview Memo") (stating that he was unaware the Metro Board Procedures prohibited Board Members from directing or supervising Metro staff).

[196] Handwritten Notes from Rosalyn Doggett (June 24, 2008).

Bottigheimer and Ms. Doggett with little to no basis to challenge or deny requests from individual Board Members.[197]

Mr. Bottigheimer stated to the investigative team that Metro Board Members attempted to persuade Metro staff to adopt a specific Board Member's position on a specific issue and present it to the rest of the Metro Board as a recommendation from the Metro staff.[198] Asking Metro staff to advocate for a Board Member's preferred outcome obscures the division between the judgment of the Metro staff and the arguments of individual Metro Board Members.

A clearly stated policy governing the interaction between Metro Board Members and Metro staff, supported by unambiguous procedures, as to which all Metro Board Members and Metro staff are trained, could have reduced any interference from individual Board Members, increased the transparency of Metro Board proceedings, and reduced delays during negotiations between Banneker Ventures and Metro joint development staff.

C. Even with Adequate Opportunities, Banneker Ventures Could Not Successfully Identify a Permanent Development Partner or Address Other Issues that Arose During the Negotiations within the Allotted Time Period

Entirely independent from any actions of the Metro Board or any Board Member, Banneker Ventures was unable to succeed in negotiating a joint development agreement acceptable to the Metro Board. Although the expressed concerns of some Metro Board Members may have delayed the project, the Metro Board also repeatedly extended the negotiation period to allow Banneker Ventures to address those concerns.[199] In the two years that Banneker Ventures spent negotiating with Metro, Banneker Ventures did not adequately address the concerns raised by the Metro Board and did not solve various other problems that it faced.[200]

[197] *Id.*; *see also* E-mail from Jonathon Kass, Committee on Public Works and Transportation, Council of the District of Columbia, to Maurice Perry, Vice President, Banc of America CDC, Omar Karim, Partner, Banneker Ventures, Yohance Fuller, Program Manager, Office of the City Administrator, District of Columbia, Joshua Montague, Assistant General Counsel, WMATA, John Hagner, Attorney at Law, Womble Carlyle Sandridge & Rice, LLP, Marshall Malcolm, Head, Appraisal Branch, WMATA, Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, and Steven Goldin, Director of Real Estate, WMATA (Oct. 22, 2009, 4:06 p.m. EST).

[198] Bottigheimer Interview Memo (stating that Metro Board Members tried to convince Metro staff to take positions based on their arguments).

[199] Meeting Minutes, 1340th Meeting of the Board of Directors, WMATA (Apr. 23, 2009); *see also* Meeting Minutes, 1344th Meeting of the Board of Directors, WMATA (Sept. 24, 2009); Meeting Minutes, 1348th Meeting of the Board of Directors, WMATA (Jan. 28, 2010).

[200] In contrast, the usual time period Metro provides to negotiate a Development Agreement is 150 days. Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements, § 3.3(C).

Importantly, Banneker Ventures was unable to retain an experienced development partner that was acceptable to the Metro Board. From the beginning of the Florida Avenue Project, the Metro Board made it clear to Banneker Ventures that it must partner with a more experienced development firm.[201] Although Banneker Ventures partnered with two experienced firms, Donatelli and Metropolis, both firms eventually withdrew.[202] Banneker Ventures's third development partner, BACDC, dropped out of the project; and Banneker Ventures did not identify a replacement.[203] According to Metro Board Members, by March 2010, the majority of Metro Board Members believed that Banneker Ventures would be unable to maintain a partnership with an experienced development firm.[204]

Banneker Ventures also lost Metro Board support because it was unable to provide a financial offer that was acceptable to the Metro Board. Banneker Ventures initially lowered its offer price on the grounds that the Metro Board's requirement to include affordable housing caused a drop in the value of the project.[205] Ms. Doggett (Metro Senior Transit Oriented Development Specialist), Ms. O'Keeffe (Metro General Counsel), and Mr. Montague (Metro Assistant General Counsel) each concluded that, although some reduction in the amount may have been reasonable due to the increased affordable housing requirement, Banneker Ventures's new offer, which was less than half of its original proposal,[206] was too low even in light of the appraised value of the property.[207] Although Banneker Ventures increased the value of its financial offer in 2010,

[201] Meeting Minutes, Planning, Development and Real Estate Committee Meeting, WMATA (June 26, 2008); Meeting Minutes, 1331st Meeting of the Board of Directors, WMATA (June 26, 2008).

[202] Doggett Interview Memo (explaining that she spoke with both Donatelli and Metropolis about their withdrawal from the Florida Avenue Project); *see also* Malone Interview Memo (stating that he did not want to participate in the Florida Avenue Project because Banneker Ventures would not give him sufficient control); Donatelli Interview Memo (stating that his firm withdrew because Donatelli lacked confidence in Banneker Ventures).

[203] E-mail from Rosalyn Doggett, Senior Transit Oriented Development Specialist, WMATA, to Nathaniel Bottigheimer, Assistant General Manager for Planning and Joint Development, WMATA, and Steve Goldin, Director of Real Estate, WMATA, and Joshua Montague, Assistant General Counsel, WMATA (Mar. 14, 2010, 8:38 p.m. EDT).

[204] Handwritten Notes from Meeting with Loyda Sequeira, Board Secretary, WMATA, author unknown (Apr. 2, 2010).

[205] *See*, *e.g.*, Karim Dep. 20:15–21:22 (July 23, 2012) (stating that Banneker Ventures ran financial projections on the affordable housing requirement and reduced its offer accordingly).

[206] Draft Memorandum, Re: Florida Avenue, unknown author (Apr. 30, 2009).

[207] Doggett Interview Memo (stating that she did not think that Banneker Ventures's offer reflected the value of the property); *see also* O'Keeffe Interview Memo (explaining she believed there was legal risk in approving a term sheet that had less value than the lowest bid proposal); Montague Interview Memo (stating that Banneker Ventures's offer was so low the deal did not make sense for Metro).

Metro Board Members felt that the increase was not enough, and that providing time for further negotiations was not likely to yield a different result.[208] Metro joint development staff who worked on the project and Metro Board Members who recalled the details of the Florida Avenue Project uniformly agreed that Banneker Ventures's reduced offer was the main reason that the Metro Board refused to extend Banneker Ventures's negotiation period.[209]

Several Metro Board Members said that it became increasingly clear throughout the negotiations that Banneker Ventures would not be able to resolve two significant issues: making a reasonable offer and finding a reliable development partner.[210] By the time the March 25, 2010 Metro Board meeting took place, support among the Metro Board Members had dissolved to the point that the Metro Board Members who had initially supported Banneker Ventures did not have enough votes to pass a resolution to extend the negotiation period.[211] As a result, the Metro

[208] Benjamin Interview Memo (stating that Councilmember Graham and Deputy Mayor Albert thought at this point that the project needed to be started over from scratch); Hudgins Interview Memo (stating that the Metro Board needed to table the project because it was unable to resolve key issues). Similarly, Metro was unable to reach a successful joint development agreement for a joint development project at Navy Yard in Southeast Washington, D.C. that was being negotiated at the same time as the Florida Avenue Project. Michael Neibauer, *Metro, Donatelli Development nix plan for ballpark district property*, Wash. Bus. J. (Aug. 23, 2010), *available at* http://www.bizjournals.com/washington/stories/2010/08/23/story4.html.

[209] Albert Interview Memo (stating that Banneker Ventures's offer did not meet Board Member expectations); Graham Dep. 137:10–18 (stating that Banneker Ventures could not assemble a suitable financial deal); Benjamin Interview Memo (stating that financial trouble or the lack of an experienced co-developer led to the expiry of the negotiation period); Downey Interview Memo (stating that the financial terms of Banneker Ventures's offer diminished throughout the negotiations); Hudgins Interview Memo (explaining that erosion in the offer price caused the Metro Board to table the project); McKay Interview Memo (stating that the project was tabled because the Metro Board believed they could get a better deal by holding the property until the economy improved); *see also* O'Keeffe Interview Memo (stating that she understood the reason that the Metro Board did not accept the term sheet was that it did not contain enough value); Montague Interview Memo (stating that Banneker Ventures's offer was so low the deal did not make sense for Metro); Linton Interview Memo (stating that he did not recall why the negotiation period was not extended, but that the value of the offer became an issue for Board Members during the negotiations); *but see* Acosta Interview Memo (stating he was not directly involved in the Florida Avenue Project); Hewlett Interview Memo (stating she was unable to recall the discussion related to the expiry of the exclusive negotiation period); Zimmerman Interview Memo (stating he thought the parties involved should get their act together, but expressing no other opinion as to the reason the negotiation period expired).

[210] Benjamin Interview Memo (stating that negotiations ceased because Banneker Ventures had financial trouble and restructured the development team several times); *see also* Hudgins Interview Memo (stating that the Metro Board needed to table the project at this point because it was unable to resolve key issues).

[211] Albert Interview Memo (stating that there were not enough votes to extend Banneker's negotiation period).

Board unanimously voted to table a motion to extend the negotiation period,[212] thereby effectively ending Banneker Ventures's opportunity to develop the Florida Avenue Project. We found no evidence to suggest that the Metro Board lacked a rational basis for its decision.

D. Councilmember Graham Acted in a Manner Contrary to Metro's Standards of Conduct

The Metro Standards of Conduct prohibit Board Members from acting in a manner that undermines the public's confidence in Metro. The Standards of Conduct broadly prohibits types of conduct and the appearance of that conduct. Specifically, Article III § A of the Standards of Conduct states:

> Public funds must be expended in a manner which assures the highest degree of confidence and public trust in WMATA. It is imperative that Board Members in their private financial relationships and *in their official conduct strictly avoid engaging in actions which create conflicts of interest or the appearance of a conflict of interest. It is likewise imperative that Board Members act impartially in their official conduct by avoiding any actions which might result in favored treatment or appearances thereof toward any individual, private organization, consultant, contractor or potential consultant or contractor. Each Board Member while acting in his/her capacity as a WMATA Board Member, has a duty to place the public interest foremost in any dealings involving WMATA* (emphasis added).[213]

After careful review, the facts establish that Councilmember Graham acted in a manner contrary to Metro's Standards of Conduct in two ways. First, by telling Warren Williams (principal of Banneker Ventures) that he would consider supporting W2I's lottery bid if Banneker Ventures withdrew from the Florida Avenue Project, Councilmember Graham pitted the interests of the Council of the District of Columbia against the interests of Metro, and thereby unnecessarily created a conflict of interest, or, at the least, the appearance of a conflict of interest. Second, by appearing to continue to support LaKritz Adler's proposal for, or inclusion in, the Florida Avenue Project while at the same time opposing Banneker Ventures, Councilmember Graham acted contrary to his duty to appear impartial. As a consequence of the foregoing, Councilmember Graham's actions resulted in a breach of his duty to place the public interest foremost in any dealings involving Metro.

[212] Meeting Minutes, 1350th Meeting of the Board of Directors, WMATA (Mar. 25, 2010).

[213] Standards of Conduct for Members of the WMATA Board of Directors, Article III § A (2006).

1. Conflict of Interest

Councilmember Graham's animosity toward Mr. Williams as well as his continued attempts to oppose Banneker Ventures were well known by those interviewed or deposed during this investigation, namely Metro joint development staff, Board Members, and other persons involved in the Florida Avenue Project.[214] While Councilmember Graham's views appear to have been colored by his personal dislike of Mr. Williams, other objections appear to have been based on his legitimate concerns with public safety and welfare. For example, Councilmember Graham was concerned with Mr. Williams's reputation as a landlord as well as his ownership of a club in Ward 1 that had lost its license to operate due to a fatal stabbing of a club patron.[215] Moreover, Councilmember Graham appeared genuinely concerned throughout the joint development process with the development experience and expertise of Banneker Ventures[216] – legitimate concerns that manifested themselves in the outcome of the process.[217]

[214] Bottigheimer Interview Memo (recalling that Councilmember Graham expressed concerns about Mr. Williams' financial situation); Doggett Interview Memo (stating that Councilmember Graham raised concerns about Mr. Williams on multiple occasions, including at the April 24, 2008 Metro Board meeting); Moneme Interview Memo (explaining that Councilmember Graham expressed concerns about Mr. Williams at the April 24, 2008 Metro Board meeting); Karim Dep. 70:15–71:19 (July 23, 2012) (stating that he believed that Councilmember Graham was trying to kill the deal by inquiring into Mr. Williams's finances).

[215] Hernandez Interview Memo (stating that Councilmember Graham discussed Club U at the May 29, 2008 meeting); *see also* Link Dep. 16:7–18:8 (stating Councilmember Graham suggested he had doubts about Mr. Williams's ability to handle the lottery contract based on the way Mr. Williams ran Club U); A. Williams Interview Memo (explaining that Councilmember Graham raised concerns about Club U at the May 29, 2008 meeting); W. Williams Interview Memo (explaining that Councilmember Graham raised concerns about Club U at the May 29, 2008 meeting); Graham Dep. 33:1–35:10 (stating that he was concerned about the way Club U was run).

[216] Graham Dep. 36:6–13 (stating that he had concerns about the expertise and ability of Banneker Ventures); Handwritten notes from Metro Board Executive Session, Rosalyn Doggett (Apr. 24, 2008) (Councilmember Graham expressed concerns about the extent of Banneker Ventures's experience and financial capabilities at the April 24, 2008 PDREC meeting); Handwritten Notes from Rosalyn Doggett (June 24, 2008) (Councilmember Graham expressed concerns about Banneker Ventures, including its financial resources and its ability to manage the project, at a June 24, 2008 meeting with Metro staff).

[217] Doggett Interview Memo (stating that Banneker Ventures did not present strong qualifications); Bottigheimer Interview Memo (explaining that he had concerns about Banneker Ventures's level of experience); Benjamin Interview Memo (stating that negotiations ceased because Banneker Ventures had financial trouble and restructured the development team several times); *see also* Hudgins Interview Memo (stating that the Metro Board needed to table the project because it was unable to resolve key issues with Banneker Ventures).

Notwithstanding his objections to Mr. Williams or Banneker Ventures, Councilmember Graham disregarded his duty to Metro when he explicitly conditioned his consideration of his support for W2I's lottery bid on Banneker Ventures's withdrawal from the Florida Avenue Project during the May 29, 2008 meeting between Councilmember Graham, Mr. Williams, Ms. Williams, and two lobbyists for W2I.

Although there are differing recollections of the precise statements made during the May 29, 2008 meeting, the weight of the evidence supports that Councilmember Graham bartered the Florida Avenue Project in exchange for his support of the D.C. lottery contract. During his deposition, Councilmember Graham stated that he did not recall making a statement linking his support for W2I's lottery bid with Banneker Ventures's withdrawal from the Florida Avenue Project, but he speculated that such a statement, if made, would have been made in passing.[218] However, three witnesses at the May 29, 2008 meeting clearly recall Councilmember Graham linking his support for the D.C. lottery contract to Banneker Ventures withdrawing from the Florida Avenue Project. In addition, two other persons stated during their interviews that they had been told by meeting participants within a few days of the May 29, 2008 meeting that Councilmember Graham had conditioned his support for the lottery on Banneker Ventures withdrawing from the Florida Avenue Project.[219]

Further, written communications subsequent to the May 29, 2008 meeting suggest that Councilmember Graham pressured Mr. Williams into withdrawing from the Florida Avenue Project during the May 29, 2008 meeting and that he continued to exert pressure following that meeting. E-mail communications between the members of W2I team in the days following the May 29, 2008 meeting indicate that they genuinely believed that Councilmember Graham had conditioned his support for the D.C. lottery on Banneker Ventures withdrawing from the Florida Avenue Project.[220] And importantly, e-mail communications *to and from* Councilmember

[218] Graham Dep. 104:8–22 (not recalling making such a statement but explaining that anything that might have been discussed to that effect would have been done in passing).

[219] A. Williams Interview Memo (stating that, within 48 hours of the May 29, 2008 meeting, she, Mr. Williams, Ms. Wright and Mr. Link met with Mr. Bolden); Boothe Interview Memo (explaining that while he did not participate in the meeting, within two days of the meeting at most, Ms. Wright, Mr. Link and Mr. Williams all conveyed to him a similar understanding that Councilmember Graham asked Banneker Ventures to withdraw from the Florida Avenue Project in order to gain his support for the lottery contract).

[220] E-mail from Warren Williams, Co-Owner, W2Tech, to A. Scott Bolden, Partner, Reed Smith LLP, Crystal Wright, Principal, Baker Wright Group, James Link, Partner, American Capitol Group, and Alaka Williams, Co-Owner, W2Tech (June 2, 2008 7:05 p.m. EDT); E-mail from A. Scott Bolden, Partner, Reed Smith LLP, to Crystal Wright, Principal, Baker Wright Group, Warren Williams, Co-Owner, W2Tech, and Alaka Williams, Co-Owner W2Tech (June 2, 2008, 8:26 p.m. EDT); E-mail from A. Scott Bolden, Partner, Reed Smith LLP, to Crystal Wright, Principal, Baker Wright Group, Warren Williams, Co-Owner, W2Tech, and Alaka Williams, Co-Owner, W2Tech (June 7, 2008, 8:51 p.m. EDT).

Graham following the May 29, 2008 meeting establish that he had interjected the Florida Avenue Project into the bartering. On June 2, 2008 – four days after the meeting in his D.C. Council office where witnesses indicated that Councilmember Graham pressured Mr. Williams to withdraw – Councilmember Graham asked in an e-mail to Jim Link, the lobbyist working with Mr. Williams on the lottery, "Do you think they will do anything. [sic]"[221] While such a question may appear innocuous, Mr. Link (and his colleagues) clearly understood Mr. Graham to be asking whether Banneker Ventures would withdraw from the Florida Avenue Project and eventually indicated in response, "As for Metro, there are a number of factors that make it impossible for us to even consider accommodating your request."[222] In his reply to Mr. Link, Councilmember Graham neither expressed surprise that a lottery lobbyist was referring to a

[221] E-mail from Jim Graham, Councilmember, Washington, D.C., to James Link, Partner, American Capitol Group (June 2, 2008, 8:12 a.m. EDT); *see also* Link Dep. 45:22–47:4:

> Q The next e-mail is from Jim Graham sent after the weekend on Monday, June 2, 2008 at 8:12 a.m. sent to you, Jim Link. Subject is "RE: Thank you."
>
> A Yep.
>
> Q Jim Graham writes back "Thanks. Do you think they will do anything?" What do you understand Jim Graham to mean when he wrote this to you?
>
> A I thought he meant that they, being Warren and Alaka, will do anything which was would they accept my [Councilmember Graham's] offer, my proposal.
>
> Q And that offer was?
>
> A What we discussed earlier, which was sort of a quid pro quo with regard to WMATA and the lottery contract.
>
> Q And that's what you understood and that's what Alaka and Warren also understood?
>
> A Yeah, I think so.
>
> Q Is it possible there could have been anything else that Graham was asking about?
>
> A No. I mean, it's possible, but that's not how we understood it.
>
> Q So he wasn't asking about the other things discussed like Club U or Sinclair Skinner?
>
> A It's possible, but that's not the way we understood it.

Cf. Boothe Interview Memo (explaining that while he did not participate in the meeting, within two days of the meeting at most, Ms. Wright, Mr. Link and Mr. Williams all conveyed to him a similar understanding that Councilmember Graham asked Banneker Ventures to withdraw from the Florida Avenue Project in order to gain his support for the lottery contract).

[222] Mr. Link's response to Councilmember Graham was informed by separate communications Mr. Link had with Attorney A. Scott Bolden, who, subsequent to the May 29, 2008 meeting, stated in an e-mail to Mr. Link, Mr. Williams, Ms. Williams, and Ms. Wright that Graham's request was "very close to corruption, bid rigging, and other inappropriate conduct." *See* E-mail from A. Scott Bolden, Partner, Reed Smith LLP, to Crystal Wright, Principal, Baker Wright Group, Warren Williams, Co-Owner W2Tech, and Alaka Williams, Co-Owner W2Tech (June 2, 2008, 8:26 p.m. EDT). We offer no views concerning Mr. Bolden's statement.

Metro development project nor attempted to correct Mr. Link's interpretation of his initial question as to whether Banneker Ventures would "do anything." Instead, Councilmember Graham stated "[T]he rejection of your application at Metro (which has not been approved) is necessitated not by any of this but by other factors related to the application."[223] If Councilmember Graham had meant something otherwise, one would have expected him to have corrected Mr. Link's interpretation in his reply.

In our view, Councilmember Graham's actions created the appearance of a conflict of interest, if not an actual conflict of interest, in a manner that is contrary to Metro's Standards of Conduct.

2. Appearance of Favoritism toward One Party

While attempting to oppose Banneker Ventures, Councilmember Graham promoted another developer, LaKritz Adler. Deputy Mayor Albert,[224] Mr. Bottigheimer (Metro Assistant General Manager for Planning and Joint Development),[225] Mr. Donatelli (principal of Donatelli Development),[226] Ms. Doggett (Metro Senior Transit Oriented Development Specialist),[227] Mr. Karim (principal of Banneker Ventures),[228] Mr. Malone (principal of Metropolis),[229] Mr. Moneme (Metro Board Member),[230] and Mr. Williams (principal of Banneker Ventures)[231] all

[223] E-mail from Jim Graham, Councilmember, Washington, D.C., to James Link, Partner, American Capitol Group (June 11, 2008, 2:26 p.m. EDT).

[224] Albert Interview Memo (explaining that Deputy Mayor Albert heard speculation that Councilmember Graham favored LaKritz Adler or Donatelli Development).

[225] Bottigheimer Interview Memo (explaining that Ms. Doggett told him that Councilmember Graham favored LaKritz Adler).

[226] Donatelli Interview Memo (stating that, at a public bid presentation for the Florida Avenue Project, Councilmember Graham told Mr. Donatelli that he preferred the LaKritz Adler proposal because it involved an adjacent property).

[227] Doggett Interview Memo (recalling that Councilmember Graham expressed support for LaKritz Adler at a meeting).

[228] Karim Dep. 33:12–17 (July 23, 2012) (stating that Councilmember Graham suggested to him to add LaKritz Adler to the development team).

[229] Malone Interview Memo (stating that he and Councilmember Graham had a conversation immediately after Councilmember Graham learned of the partnership. Councilmember Graham asked Mr. Malone why he would lend his support to a "joker" firm such as Banneker Ventures).

[230] Moneme Interview Memo (stating that LaKritz Adler was understood to be Councilmember Graham's favorite developer).

[231] W. Williams Interview Memo (explaining that he heard that Councilmember Graham wanted LaKritz Adler to be the developer of the Florida Avenue Project).

heard either directly from Councilmember Graham or from other sources that Councilmember Graham wanted LaKritz Adler to be awarded the Florida Avenue Project.[232]

Although LaKritz Adler had some experience and expertise, particularly in Ward 1, LaKritz Adler's proposal offered the least financial benefit to Metro. In setting its bid at $6 million, LaKritz Adler submitted the lowest initial offer for the Florida Avenue Property.[233] Its bid fell $1.5 million short of the $7.5 million that an independent appraiser determined to be the value of the property at the time.[234] LaKritz Adler's offer was $5.8 million less than Moddie Turay's offer of $11.8 million, and it was less than half of the $14 million offer submitted by Banneker Ventures.[235] The significantly lower bid was the primary reason the Metro joint development staff eliminated LaKritz Adler early in the bidding competition.[236] Yet, despite LaKritz Adler's lowest bid and the Metro joint development staff's rejection thereof, Councilmember Graham continued to advocate for LaKritz Adler.[237]

The Metro joint development staff's recommendation that the Metro Board select Banneker Ventures as the developer for the Florida Avenue Project did not stop Councilmember Graham from pushing the Metro joint development staff to involve LaKritz Adler in the project. On January 29, 2009, almost a full year after Metro selected Banneker Ventures, Councilmember Graham expressed his support for LaKritz Adler to be involved in the Florida Avenue Project to Ms. Doggett (Metro Senior Transit Oriented Development Specialist) at a meeting regarding the Florida Avenue Project.[238] According to Ms. Doggett, five days later, on February 3, 2009, Joshua Adler, one of the principals at LaKritz Adler, called to say that Councilmember Graham had asked him to "make a deal" with Banneker Ventures.[239] Ms. Doggett explained to the

[232] *Contra* Graham Dep. 32:18–22, 134:6–13 (explaining that he preferred Clark Construction to LaKritz Adler). Mr. Adler stated that he did not know why it was perceived that Councilmember Graham preferred LaKritz Adler to develop the Florida Avenue properties, but speculated it could be due to LaKritz Adler's reputation for development in Ward 1. Adler Interview Memo.

[233] Based on a sixty-year lease period; Doggett Jan. 29, 2008 Memo.

[234] *Id*.

[235] *Id*.

[236] *Id*.; Doggett Interview Memo (explaining that Ms. Doggett eliminated LaKritz Adler from consideration first because its proposal did not exceed the appraised value of the property).

[237] Doggett Interview Memo (recalling that Councilmember Graham expressed support for LaKritz Adler at a meeting); Handwritten Notes from Rosalyn Doggett (Feb. 3, 2009).

[238] Doggett Interview Memo (recalling that Councilmember Graham expressed support for LaKritz Adler at a meeting).

[239] Handwritten Notes from Rosalyn Doggett (Feb. 3, 2009). During his interview, Mr. Adler did not recall discussing these topics with Ms. Doggett and did not recall specific conversations about Banneker Ventures with Councilmember Graham. Adler Interview Memo.

investigative team that Mr. Adler spoke with specificity about Banneker Ventures's proposal, and that she did not know how he obtained the information.[240] By openly advocating for LaKritz Adler to the Metro joint development staff and by encouraging LaKritz Adler to pursue opportunities to develop the project, Councilmember Graham continued to demonstrate an appearance of favoritism for LaKritz Adler.

Councilmember Graham also made known his views on LaKritz Adler to the principals of Banneker Ventures. According to Omar Karim (principal of Banneker Ventures), Councilmember Graham explicitly told him that he should add LaKritz Adler to the development team, apparently going so far as to give him Mr. Adler's phone number.[241] Councilmember Graham's preference for LaKritz Adler was echoed further in Mr. Williams's e-mail after the May 29, 2008 meeting, in which Mr. Williams wrote, "We have begun some preliminary talks with LaKritz, the developer that he wants to see win the site."[242] Despite the fact that Banneker Ventures already had an experienced development partner, Mr. Karim reluctantly acquiesced to Councilmember Graham's request by contacting and meeting[243] with LaKritz Adler in the summer of 2008 to discuss a potential partnership for the Florida Avenue Project.[244]

[240] Doggett Interview Memo (stating that representatives of LaKritz Adler would call her and speak with specificity about Banneker Ventures's proposal, and that they seemed to have more information than was publicly available). During his interview, Mr. Adler did not recall discussing these specific topics with Ms. Doggett. Mr. Adler stated that he did not recall being provided any documents about Banneker Ventures's submissions to Metro. Adler Interview Memo.

[241] Karim Dep. 33:12–17 (July 23, 2012):

> A So he – he strongly recommended that we add LaKritz Adler to our development team. It's a development company, he told us to do it. He might have even given me Josh Adler's phone number, because immediately thereafter, I contacted him. . . .

[242] E-mail from Warren Williams, Co-Owner, W2Tech, to A. Scott Bolden, Partner, Reed Smith LLP, Crystal Wright, Principal, Baker Wright Group, James Link, Partner, American Capitol Group, and Alaka Williams, Co-Owner, W2Tech (June 2, 2008, 7:05 p.m. EDT).

[243] Karim Dep. 36:6–12, 37:6–9 (July 23, 2012):

> Q Why would it have been in your interest to get involved with LaKritz?
>
> A Because the guy that's controlling our deal suggested that we do it. Jim Graham, that is.
>
> . . .
>
> Q Would you have gotten LaKritz involved and had discussions with LaKritz, had Councilman Graham not told you to contact LaKritz?
>
> A Absolutely not.

[244] Karim Dep. 87:15–89:2 (July 23, 2012) (explaining that negotiations continued until at least August 2008, and ceased because Banneker Ventures thought the price of the adjacent parcel was too high); *see also* Handwritten Notes from Rosalyn Doggett (Feb. 3, 2009); *see also* Graham Dep. 126:7–17 (stating

LaKritz Adler kept trying to stay involved in the Florida Avenue Project. Even after discussions between LaKritz Adler and Banneker Ventures proved futile, representatives from LaKritz Adler continued to call Ms. Doggett every few months to inquire about the Florida Avenue Project.[245] These conversations apparently continued until at least January of 2010.[246] According to Ms. Doggett, during these phone calls LaKritz Adler's principals would reiterate the benefits of their proposal while interjecting negative statements about Banneker Ventures.[247] The principals of LaKritz Adler also appeared to stay closely abreast of the actions of the Metro Board regarding the Florida Avenue Project.[248] In January 2010, Mr. Adler wrote to Mr. LaKritz to relate that the PDREC had extended negotiations with Banneker Ventures until March 31, 2010, and specifically mentioned that Councilmember Graham was ill and unable to attend the committee hearing.[249] In short, LaKritz Adler persisted in its efforts to have a role in a project that had been awarded previously to Banneker Ventures in 2008.[250]

Instead of working to bring the Florida Avenue Project to fruition, Councilmember Graham attempted to undermine the selected developer, Banneker Ventures, and tried to promote LaKritz Adler or to orchestrate the composition of the development team in favor of LaKritz Adler. Councilmember Graham's actions created an appearance that he was not impartial and thereby were contrary to Metro's Standards of Conduct.

* * *

that he may have asked Mr. Karim to consider LaKritz Adler as a development partner after Metropolis withdrew).

[245] Doggett Interview Memo (stating that Mr. Adler called every few months to discuss the Florida Avenue Project); Handwritten Notes from Rosalyn Doggett (Feb. 3, 2009). Mr. Adler indicated that he would call Ms. Doggett every six months between the time period in which Banneker Ventures was selected as the joint developer (March 2008) and the point when the negotiation period expired (March 2010). Adler Interview Memo.

[246] E-mail from Joshua Adler, Principal, LaKritz Adler, to Robert LaKritz, Principal, LaKritz Adler (Jan. 11, 2010, 5:34 p.m. EST).

[247] Doggett Interview Memo (explaining that Mr. Adler would often speak highly of his team and negatively about other developers including Banneker Ventures). Mr. Adler did not recall making any statements about Banneker Ventures during his phone conversations with Ms. Doggett. Adler Interview Memo.

[248] E-mail from Joshua Adler, Principal, LaKritz Adler, to Robert LaKritz, Principal, LaKritz Adler (Jan. 15, 2010, 1:03 p.m. EST).

[249] *Id*.

[250] LaKritz Adler's delays in providing documents to the investigative team and refusal to cooperate fully in this investigation hindered our ability to investigate these issues. *Supra*, note 2.

In sum, the evidence establishes that Councilmember Graham acted in a manner contrary to Metro's Standards of Conduct in two ways. First, by telling Warren Williams that he would consider supporting W2I's lottery bid if Banneker Ventures withdrew from the Florida Avenue Project, Councilmember Graham pitted the interests of the Council of the District of Columbia against the interests of Metro, and thereby unnecessarily created a conflict of interest, or, at the least, the appearance of a conflict of interest. The fact that Councilmember Graham served on both the D.C. Council and the Metro Board was not the source of the conflict, and we take no position on the fact that elected officials serve on the Metro Board. Indeed, the Metro Board has an extensive history of elected officials dutifully serving on the Metro Board without issue, and the Metro Board had in place during the relevant period Standards of Conduct designed to promote a fair, transparent, and ethical contracting process. Councilmember Graham created the conflict through his own actions of appearing to barter a Metro joint development project with a matter before the D.C. Council. Rather than operating within the confines of the Metro boardroom to garner the necessary votes to oppose Banneker Ventures, he circumvented the Metro Board by attempting to single-handedly persuade Mr. Williams to withdraw from the Florida Avenue Project by using the lucrative D.C. lottery contract as leverage. These actions were done without the knowledge and consent of the Metro Board. Regardless of whether Councilmember Graham was correct in his concerns about Banneker Ventures, the method he used toward achieving his goal undermined the integrity of the joint development process.

Second, by appearing to continue to support LaKritz Adler's proposal for, or inclusion in, the Florida Avenue Project while at the same time opposing Banneker Ventures, Councilmember Graham acted contrary to his duty to appear impartial. This is not to suggest that LaKritz Adler acted inappropriately to warrant Councilmember Graham's support. Instead, Councilmember Graham appeared to be motivated by some combination of his own animosity toward Warren Williams and his interest in shaping the Florida Avenue Project as he thought appropriate. Regardless of whether another developer would have been a better choice than Banneker Ventures, the appropriate venue for Councilmember Graham to air his concerns with Banneker Ventures or to propose changes to the joint development team was the Metro boardroom.

As a consequence of the foregoing, the public's trust in Metro's joint development process has been harmed and thus Councilmember Graham's actions resulted in a breach of his duty to place the public interest foremost in any dealings involving Metro.

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Respectfully submitted,



Bradley J. Bondi

CC: Kenneth L. Wainstein, Esq.
Dale Chakarian Turza, Esq.
Emily J. Rockwood, Esq.
Samantha A. Dreilinger, Esq.
Brett A. Sisto, Esq.